

Richard Abrams

THE ISSUE OF
FEDERAL REGULATION
IN THE PROGRESSIVE ERA

The Berkeley Series in American History

Edited by CHARLES SELLERS

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THE BERKELEY SERIES IN AMERICAN HISTORY

The Issue of Federal Regulation in the Progressive Era

Edited by

RICHARD ABRAMS

UNIVERSITY OF CALIFORNIA AT BERKELEY

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Charles Sellers, editor



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CONTENTS

	PAGE
INTRODUCTION	1
I. THE ISSUE IN THE ABSTRACT	3
<i>A.</i> The Moral Discipline of Work	3
<i>B.</i> The State and the Forgotten Man	4
<i>C.</i> Man's Struggle with Nature and with Men	9
II. FROM THE ABSTRACT TO THE CONCRETE: THE "AMERICAN WAY" REVIEWED	11
III. THE ISSUE OF FEDERAL REGULATION IN THE PROGRESSIVE ERA	15
<i>A.</i> The Inadequacies of State Regulation	16
<i>B.</i> Theodore Roosevelt's View	20
<i>C.</i> Woodrow Wilson's View	24
IV. A MORE DETAILED LOOK AT THE PROBLEM: THE CASE OF THE RAILROADS	33
<i>A.</i> The Case for Federal Rate-Making	33
<i>B.</i> The Perils of Federal Rate-Making	38
<i>C.</i> The Rate-Making Debate Continued	43
V. THE ISSUE "RESOLVED"	48
Applied Science vs. Grass Roots	48
APPENDIX	54
FOR FURTHER READING	57



INTRODUCTION

GOVERNMENT INTERVENTION IN SOCIAL AND ECONOMIC ACTIVITIES IS "two-handed." On the one hand, the government intervenes to support and encourage; on the other, it intervenes to limit and control. The restrictive form of intervention is actually the older in American history, dating to the Jamestown and Plymouth settlements. The more positive form, though largely unacknowledged because it contradicted a powerful American credo founded in "rugged individualism," "laissez faire," and "self-help," reached formidable proportions in the nineteenth century and is a well-established part of traditional American behavior, as the Robert Lively selection is designed to show. In fact, *all* government action, whatever the intent, whether state or Federal, both aids and restricts, encourages and restrains. An import tariff restricts consumer's freedom to choose among alternative products or commodities and limits the opportunity of merchants to deal in certain imported goods, while at the same time it encourages the development of certain domestic industries and enhances the job opportunities of domestic workers. The seemingly "neutral" business of government road-building opens opportunities for some merchants by multiplying the markets they can reach and aids industries like trucking, petroleum, and automobile manufacturing, while at the same time it limits the opportunities of some other merchants who must meet new competition in their local market and injures the status of some industries like the railroads. The manners in which municipal, state, and Federal revenues are collected, the banks they are "stored" in, the purposes of their distribution and the forms in which they are distributed have always—by intention and by inadvertence—stifled some private interests and stimulated others. It is no wonder that determination of these questions has been the source of many of the country's most acrimonious political struggles, from Alexander Hamilton's program of Federal assumption of the states' debts through the controversies over the two Banks of the United States, the Greenback and "Free Silver" furors, and the establishment of the Federal Reserve System. Even in carrying on its "normal" state functions, like distributing the mail and parcel post, the government can determine the profit expectations and perhaps the survival of railroads, truckers, air lines, and

steamship lines. In more recent times, of course, how government officials decide to allocate among private businesses the tasks of supplying our armed forces and providing for the national defense determines the survival or failure of even very "big" businesses and indirectly affects the entire economy.

The crucial "life-and-death" role of the Federal government in mid-twentieth century business enterprise does not derive entirely from the exigencies of the "cold war." The course of American business-government relations from 1887 to 1939 (before the era of the perpetual "war economy") indicates that the Federal government would have had much the same role even without a war peril. Under entirely peaceful conditions, especially following the Interstate Commerce Act in 1887, the Federal government has assumed one regulatory function after another—anti-trust, banking, labor conditions, inheritances, incomes, exports, merchant marine, labor unions, stock exchanges, crop marketing, minerals production, and so on and on and on—until today there is barely a single business or agricultural enterprise which does not depend *crucially* on decisions made by Federal officials.

This condition has proceeded from deliberate public policy. Each new form of intervention followed from specific demands after deliberate and often prolonged consideration in the country's representative forums and legislative bodies. But it was during the Progressive Era that the general issue of Federal regulation first received major consideration and acknowledgment as a decisive influence in the American economy.

Throughout the years following the Civil War and Reconstruction (in which the Federal government had found itself, willy-nilly, engaged in the monumental task of directing the restructuring of an entire region's social system), demands mounted, particularly from agricultural areas, for intervention in economic processes by state and Federal governments. Directed primarily at the alleged abuses of railroad corporations and the inadequacies of the country's privately-run banking system, the demand for government action touched with increasing frequency upon the far more general issue of maldistribution of the national wealth.



THE ISSUE IN THE ABSTRACT

ALL THESE APPEALS HAD FIRST TO OVERCOME THE PREDOMINANT AVOWED ideology of the times. That ideology, as expressed in its most disinterested or idealistic form by William Graham Sumner (1840–1910), Professor of Political Science at Yale University and a disciple of the English sociologist Herbert Spencer, made use of the most recent scientific theories about the laws of Nature to condemn political—that is, “artificial”—interference with the “natural” processes of social development. Sumner’s “Social Darwinism” strikes most people today as embodying gross misapprehensions about science and a gross misapplication of biological knowledge to social processes. But even today, in the middle of the twentieth century, there is considerable provocative force in his view that “Certain ills belong to the hardships of human life,” that “It is not at all the function of the State to make men happy,” and that “It is not to be admitted for a moment that liberty is a means to social ends, and that it may be impaired for major considerations.” (Compare Theodore Roosevelt’s qualifications regarding individual liberty in 1910, quoted on page 23 below.) Similarly, his frigidly realistic description of the State (“only a little group of men chosen in a very haphazard way”) can be chilling to those who urge placing upon “the State” regulative functions in the production and distribution of wealth.

A.

THE MORAL DISCIPLINE OF WORK

¶In the following selection, Richard Hofstadter, a modern liberal historian, presents a brief view of Social Darwinism which should serve to introduce the student in a fresh way to the assertions of a man who, in his own time, was very much a liberal himself. The Sumner selection follows immediately thereafter. (Richard Hofstadter, *Social Darwinism in American Thought* [Boston: Beacon Press, 1955], pp. 9–11.)]

. . . SOCIAL DARWINISM of the hard-bitten sort represented by men like Sumner embodied a vision of life and, if the phrase will be admitted, expressed a kind of secular piety that commands our attention. Sumner, and no doubt after him all those who at one time or another were impressed by his views, were much concerned to face up to the hardness of life, to the impossibility of finding easy solutions for human ills, to the necessity of labor and self-denial and the inevitability of suffering. Theirs is a kind of naturalistic Calvinism in which man's relation to nature is as hard and demanding as man's relation to God under the Calvinistic system. This secular piety found its practical expression in an economic ethic that seemed to be demanded with special urgency by a growing industrial society which was calling up all the labor and capital it could muster to put to work on its vast unexploited resources. . . . The economic ethic engendered by these circumstances put a premium on those qualities that seemed necessary for the disciplining of a labor force and a force of small investors. In articulating those needs, Sumner expressed an inherited conception of economic life . . . under which economic activity was considered to be above all a field for the development and encouragement of personal character. Economic life was construed as a set of arrangements that offered inducements to men of good character, while it punished those who were, in Sumner's words, "negligent, shiftless, inefficient, silly, and imprudent."

Today we have passed out of the economic framework in which that ethic was formed. . . . The growing divorcement of the economic process from considerations that can be used to discipline human character, and, still worse, our increasing philosophical and practical acceptance of that divorcement, is a source of real torment to the stern minority among us for whom the older economic ethic still has a great deal of meaning. And anyone who today imagines that he is altogether out of sympathy with that ethic should ask himself whether he has never, in contemplating the possibility of a nearly workless economic order, powered by atomic energy and managed by automation, had at least a moment of misgiving about the fate of man in a society bereft of the moral discipline of work.

B.

THE STATE AND THE FORGOTTEN MAN

¶ In reading the following excerpts from William Graham Sumner's book, *What Social Classes Owe to Each Other*, the student should seek to discover what values are central to Sumner's thought; that is, what is it that he is most anxious to protect, even if it requires acquiescence in social miseries? If in fact those values could be protected only through such acquiescence, would you agree that the sacrifice should be made?

When Sumner argues that he has "no grievance" if his neighbor is more successful than he in his "struggle with Nature for existence," does he include human competition as a part of the "struggle with Nature"?

If not, why not? If so, where does Sumner draw the line between ills which derive from the "natural" struggle amongst men and the ills which derive from "the malice of men"? Is there a point at which struggle becomes malicious? How much of society's ills does Sumner appear to ascribe to malice, vice, and faulty institutions? How much to Nature? (William Graham Sumner, *What Social Classes Owe to Each Other* [New York: Harper, 1883], *passim*.)

WE ARE told every day that great social problems stand before us and demand a solution, and we are assailed by oracles, threats, and warnings in reference to those problems. . . . So far as I can find out what the classes are who are respectively endowed with the rights and duties of posing and solving social problems, they are as follows: Those who are bound to solve the problems are the rich, comfortable, prosperous, virtuous, respectable, educated, and healthy; those whose right it is to set the problems are those who have been less fortunate or less successful in the struggle for existence. The problem itself seems to be, How shall the latter be made as comfortable as the former? To solve this problem, and make us all equally well off, is assumed to be the duty of the former class; the penalty, if they fail of this is to be bloodshed and destruction. If they cannot make everybody else as well off as themselves, they are to be brought down to the same misery as others.

During the last ten years I have read a great many books and articles, especially by German writers, in which an attempt has been made to set up "the State" as an entity having conscience, power, and will sublimated above human limitations, and as constituting a tutelary genius over us all. I have never been able to find in history or experience anything to fit this concept. . . . As an abstraction, the State is to me only All-of-us. In practice—that is, when it exercises will or adopts a line of action—it is only a little group of men chosen in a very haphazard way by the majority of us to perform certain services for all of us. The majority do not go about their selection very rationally, and they are almost always disappointed by the results of their own operation. Hence "the State," instead of offering resources of wisdom, right reason, and pure moral sense beyond what the average of us possess, generally offers much less of all those things. Furthermore, it often turns out in practice that "the State" is not even the known and accredited servants of the State, but, as has been well said, is only some obscure clerk, hidden in the recesses of a Government bureau, into whose power the chance has fallen for the moment to pull one of the stops which control the Government machine. . . . In our day it often happens that "the State" is a little functionary on whom a big functionary is forced to depend.

I cannot see the sense of spending time to read and write observations, such as . . . : If the statesmen could attain to the requisite knowledge and wisdom, it is conceivable that the State might perform important regulative functions in the production and distribution of wealth, against which no positive and sweeping theoretical objection could be made from the side of economic science; but statesmen never can

acquire the requisite knowledge and wisdom. —To me this seems a mere waste of words. The inadequacy of the State to regulative tasks is agreed upon, as a matter of fact, by all. Why, then, bring State regulation into the discussion simply in order to throw it out again? The whole subject ought to be discussed and settled aside from the hypothesis of State regulation.

The little group of public servants who, as I have said, constitute the State, when the State determines on anything, could not do much for themselves or anybody else by their own force. If they do anything, they must dispose of men, as in an army, or of capital, as in a treasury. But the army, or police, or *posse comitatus*, is more or less All-of-us. Therefore, when the State means power-to-do it means All-of-us, as brute force or as industrial force.

If anybody is to benefit from the action of the State it must be Some-of-us. If, then, the question is raised, What ought the State to do for labor, for trade, for manufactures, for the poor, for the learned professions? etc., etc.—that is, for a class or an interest—it is really the question, What ought All-of-us to do for Some-of-us? . . .

[Is there] anything but a fallacy and a superstition in the notion that "the State" owes anything to anybody except peace, order, and the guarantees of right[?] . . . Discussions are made to bear upon the assumed rights, wrongs, and misfortunes of certain social classes; and all public speaking and writing consists, in a large measure, of the discussion of general plans for meeting the wishes of classes of people who have not been able to satisfy their own desires. . . . Sometimes they are discontented and envious. They do not take their achievements as a fair measure of their rights. They do not blame themselves or their parents for their lot, as compared with that of other people. Sometimes they claim that they have a right to everything of which they feel the need for their happiness on earth. To make such a claim against God or Nature would, of course, be only to say that we claim a right to live on earth if we can. But God and Nature have ordained the chances and conditions of life on earth once for all. The case cannot be reopened. We cannot get a revision of the laws of human life. We are absolutely shut up to the need and duty, if we would learn how to live happily, of investigating the laws of Nature, and deducing the rules of right living in the world as it is. These are very wearisome and commonplace tasks. They consist in labor and self-denial repeated over and over again in learning and doing. When the people whose claims we are considering are told to apply themselves to these tasks they become irritated and feel almost insulted. They formulate their claims as rights against society—that is, against some other men. In their view they have a right, not only to *pursue* happiness, but to *get* it; and if they fail to get it, they think they have a claim to the aid of other men—that is, to the labor and self-denial of other men—to get it for them. . . .

A man who can command another man's labor and self-denial for the support of his own existence is a privileged person of the highest species conceivable on earth. Princes and paupers meet on this plane, and no other men are on it at all. . . .

Certain ills belong to the hardships of human life. They are natural. They are part of the struggle with Nature for existence. We cannot blame our fellow-men for our share of these. My neighbor and I are both struggling to free ourselves from these ills. The fact that my neighbor has succeeded in this struggle better than I constitutes no grievance for me. Certain other ills are due to the malice of men, and to the imperfections or errors of civil institutions. These ills are an object of agitation, and a subject of discussion. The former class of ills is to be met only by manly effort and energy; the latter may be corrected by associated effort. . . . The distinction here made between the ills which belong to the struggle for existence and those which are due to the faults of human institutions is of prime importance. . . . Especially we shall need to notice the attempts to apply legislative methods of reform to the ills which belong to the order of Nature. . . .

A man who is present as a consumer, yet who does not contribute either by land, labor, or capital to the work of society, is a burden. . . . The "poor man" is an elastic term, under which any number of social fallacies may be hidden. . . . In general, however, it may be said that . . . [the poor or the weak] constantly neutralize and destroy the finest efforts of the wise and industrious, and are a dead-weight on the society in all its struggles to realize any better things. Whether the people who mean no harm, but are weak in the essential powers necessary to the performance of one's duties in life, or those who are malicious and vicious, do the more mischief, is a question not easy to answer. . . .

The humanitarians, philanthropists, and reformers, looking at the facts of life as they present themselves, find enough which is sad and unpromising in the condition of many members of society. They see wealth and poverty side by side. They note great inequality of social position and social chances. They eagerly set about the attempt to account for what they see, and to devise schemes for remedying what they do not like. . . . They invent new theories of property, distorting rights and perpetrating injustice, as any one is sure to do who sets about the re-adjustment of social relations with the interests of one group distinctly before his mind, and the interests of all other groups thrown into the background. . . . In all these schemes and projects the organized intervention of society through the State is either planned or hoped for, and the State is thus made to become the protector and guardian of certain classes. The agents who are to direct the State action are, of course, the reformers and philanthropists. Their schemes, therefore, may always be reduced to this type—that A and B decide what C shall do for D. . . . I call C the Forgotten Man, because I have never seen that any notice was taken of him in any of the discussions. . . .

No doubt one chief reason for the unclear and contradictory theories of class relations lies in the fact that our society, largely controlled in all its organization by one set of doctrines, still contains survivals of old social theories which are totally inconsistent with the former. In the Middle Ages men were united by custom and prescription into associations, ranks, guilds, and communities of various kinds.

These ties endured as long as life lasted. Consequently society was dependent, throughout all its details, on status, and the tie, or bond, was sentimental. In our modern state, and in the United States more than anywhere else, the social structure is based on contract, and status is of the least importance. Contract, however, is rational—even rationalistic. It is also realistic, cold, and matter-of-fact. A contract relation is based on a sufficient reason, not on custom or prescription. It is not permanent. It endures only so long as the reason for it endures. In a state based on contract sentiment is out of place in any public or common affairs. . . . The sentimentalists among us always seize upon the survivals of the old order. They want to save them and restore them. . . .

Whether social philosophers think it desirable or not, it is out of the question to go back to status or to the sentimental relations which once united baron and retainer, master and servant, teacher and pupil, comrade and comrade. That we have lost some grace and elegance is undeniable. That life once held more poetry and romance is true enough. But it seems impossible that any one who has studied the matter should doubt that we have gained immeasurably, and that our farther gains lie in going forward, not in going backward. The feudal ties can never be restored. If they could be restored they would bring back personal caprice, favoritism, sycophancy, and intrigue. A society based on contract, therefore, gives the utmost room and chance for individual development, and for all the self-reliance and dignity of a free man. . . .

The notion of civil liberty which we have inherited is that of a *status created for the individual by laws and institutions, the effect of which is that each man is guaranteed the use of all his own powers exclusively for his own welfare*. It is not at all a matter of elections, or universal suffrage, or democracy. All institutions are to be tested by the degree to which they guarantee liberty. It is not to be admitted for a moment that liberty is a means to social ends, and that it may be impaired for major considerations. Any one who so argues has lost the bearing and relation of all the facts and factors in a free state. A human being has a life to live, a career to run. He is a centre of powers to work, and of capacities to suffer. What his powers may be—whether they can carry him far or not; what his chances may be, whether wide or restricted; what his fortune may be, whether to suffer much or little—are questions of his personal destiny which he must work out and endure as he can. . . . It is not at all the function of the State to make men happy. They must make themselves happy in their own way, and at their own risk. The functions of the State lie entirely in the conditions or chances under which the pursuit of happiness is carried on, so far as those conditions or chances can be affected by civil organization. Hence, liberty for labor and security for earnings are the ends for which civil institutions exist, not means which may be employed for ulterior ends.

. . . An immoral political system is created whenever there are privileged classes—that is classes who have arrogated to themselves rights while throwing duties upon others. . . . But the real danger of democracy is, that the classes which have the power under it will assume all the rights and reject all the duties—that is, that they will use the

political power to plunder those-who-have. Democracy, in order to be true to itself, and to develop into a sound working system, must oppose the same cold resistance to any claims for favor on the ground of poverty, as on the ground of birth and rank. . . .

C.

MAN'S STRUGGLE WITH NATURE AND WITH MEN

☞ Sumner contends that the state owes its constituents nothing more than "peace, order, and guarantees of right"; he argues that a political system becomes "immoral" when it permits one class to assume "rights" for itself and to throw duties upon others. In the following selection, another Social Darwinist, Oliver Wendell Holmes, Jr. (1841-1935), the great Supreme Court Justice, contends that the struggle for life does indeed continue in human society. How does this bear on *his* view of classes, rights, and duties? On what things does Holmes agree with Sumner? On what does he disagree? According to Holmes, what role does legislation play in the struggle for existence? As Holmes sees it, what limitations do the laws of Nature place on legislative action? Are there other forces which inhibit or direct legislative action? In Holmes's view, would legislative intervention in socio-economic processes contradict the laws of Nature? Finally, what view of "right" is implied in Holmes's assertion that "a man rightly prefers his own interest to that of his neighbors"? (from *The Mind and Faith of Justice Holmes*, by Max Lerner; copyright 1943 by Max Lerner; by permission of Little, Brown and Company.)]

IT HAS always seemed to us a singular anomaly that believers in the theory of evolution and in the natural development of institutions by successive adaptations to the environment, would be found laying down a theory of government intended to establish its limits once for all by a logical deduction from axioms. . . . Mr. [Herbert] Spencer is forever putting cases to show that the reaction of legislation is equal to its action. By changing the law, he argues, you do not get rid of any burden, but only change the mode of bearing it, and if the change does not make it easier to bear for society, considered as a whole, the legislation is inexpedient. This tacit assumption of the solidarity of the interests of society is very common, but seems to us to be false. The struggle for life, undoubtedly, is constantly putting the interests of men at variance with those of the lower animals. And the struggle does not stop in the ascending scale with the monkeys, but is equally the law of human existence. Outside of legislation this is undeniable. It is mitigated by sympathy, prudence, and all the social and moral qualities. But in the last resort a man rightly prefers his own interest to that of his neighbors. And this is as true in legislation as in any other form of corporate action. All that can be expected from modern improvements is that legislation should easily and quickly, yet not too quickly, modify itself in accordance with the will of the *de facto* supreme power in the con-

munity, and that the spread of an educated sympathy should reduce the sacrifice of minorities to a minimum. But whatever body may possess the supreme power for the moment is certain to have interests inconsistent with others which have competed unsuccessfully.

The more powerful interests must be more or less reflected in legislation; which, like every other device of man or beast, must tend in the long run to aid the survival of the fittest. . . . It is no sufficient condemnation of legislation that it favors one class at the expense of another; for much or all legislation does that; and none the less when the *bona fide* object is the greatest good of the greatest number. Why should the greatest number be preferred? Why not the greatest good of the most intelligent and most highly developed? The greatest good of a minority of our generation may be the greatest good of the greatest number in the long run. But if the welfare of all future ages is to be considered, legislation may as well be abandoned for the present. If the welfare of the living majority is paramount, it can only be on the ground that the majority have the power in their hands. The fact is that legislation in this country, as well as elsewhere, is empirical. It is necessarily made a means by which a body, having the power, put burdens which are disagreeable to them on the shoulders of somebody else. . . .



FROM THE ABSTRACT TO THE CONCRETE: THE "AMERICAN WAY" REVIEWED

WHATEVER THE VIRTUE OF THE FACT, AMERICAN LEGISLATION HAS BEEN "empirical." Though Americans have continued to give verbal honor to "self-help" and "laissez-faire," various groups in American society, "having the power," have made interested use of government—primarily state government, but also Federal government (*e.g.*, land grants to railroads). In the following selection, Robert A. Lively comments on more than a dozen books and articles by American scholars completed within the past twenty years which have conclusively established the fact of vigorous government participation with private enterprise throughout the nineteenth century in the development of the national economy. (Robert A. Lively, "The American System: A Review Article," *The Business History Review*, XXIX [March 1955], 81-96.)

. . . [ALL THE men reviewed] are united in their belief that the activities of state and local governments were of crucial importance in the stimulation of enterprise in the United States. . . . In their report of the struggle of communities and states for control of inland produce or for access to markets, they document the emergence of a sturdy tradition of public responsibility for economic growth. The tradition as they describe it, persistent to the very end of the nineteenth century, was so extensively employed that it seems expanded in no theoretical respect by its modern uses in the Tennessee Valley or in the exploitation of atomic energy. . . .

The error [of past historians in overlooking these activities] was one of monumental proportions, a mixture of over-looked data, interested distortion, and persistent preconception. . . .

In applying the word "planning" to ante-bellum practices, [the recent revisionists] quite consciously gave the word its modern meaning—that is, the adoption by communities of "deliberate and concerted policies . . . designed to promote economic expansion or prosperity and in which positive action to provide favorable conditions for eco-

conomic activity is emphasized more strongly than negative regulation or the correction of abuses." . . . In the America [that the revisionists] described there was no particular disposition to question the propriety of public enterprise, where private efforts proved inadequate to meet public needs. . . . The need for capital was the factor that most frequently determined government entry into the field of enterprise; only public authorities could command sufficient credit at a reasonable interest rate for work of the size demanded. . . . Underlying every justification for state endeavor was the hope that by public effort businessmen of a locality would prosper, that land values would rise, and that the competitive position of the area would be improved. The whole business community was dependent on state execution of the general investment functions necessary to economic growth; it was by state endeavor that "idle resources could be brought into employment and the social income maximized." . . .

However varied the explanations for public sponsorship of enterprise, the facts supporting these stories can be summarized in one generalization: the movement was virtually unlimited both as to time and place. From Missouri to Maine, from the beginning to the end of the nineteenth century, governments were deeply involved in lending, borrowing, building, and regulating. Beyond this observation summary is difficult. . . . Massachusetts, for instance, used licensing laws to grant monopoly privileges to selected entrepreneurs; the pioneer glass manufacturers of the state were promised years of freedom from competition. Bounties were given quite freely by several states, particularly to agriculture. Maine paid out \$150,000 in the year 1839 alone to wheat and corn producers; nine states subsidized silk culture; and Massachusetts aided fisheries and naval stores production. Tax exemptions and relief of workers from poll taxes or from militia and jury duty were other means by which industries in certain states were encouraged. Pennsylvania was active for a number of years after the Revolution in fixing prices for certain goods and services. Many states encouraged quality production by inspection laws, affecting in particular goods consigned to interstate commerce. Georgia maintained 30 public warehouses for the grading and marketing of tobacco by 1800; and Missouri inspected virtually all tobacco exported after she constructed a \$25,000 tobacco warehouse at St. Louis in 1843. Stay laws, relief laws, and public loan offices were familiar phenomena after the Panic of 1819.

The authors cited have skirted warily around one type of major undertaking comparable in scope to the internal improvements effort. Enterprise throughout the union depended heavily on the credit provided by the investment of state capital in banking operations. Recent reappraisals of the operations of the Second Bank of the United States, however, have not been followed by more than casual summaries of the way in which states put their resources behind public or mixed banking systems. . . . No one, for instance, has developed the challenging conclusion offered by Guy S. Callender more than 50 years ago, to the effect that the southwestern states, in their large-scale grants of credit

to commercial agriculture, maintained responsibilities comparable to the canal and railroad building efforts of the middle states. . . .

[Most historians also seem to have missed] a central theme in the nation's economic development—the incorrigible willingness of American public officials to seek the public good through private negotiations. The detail of these negotiations should be pursued with infinite care. No one has undertaken extended or precise description of the way public and private obligations were combined by officers and public guardians of ante-bellum mixed corporations. Their compromise of sometimes contradictory duties, nonetheless, established ruling conventions for postwar economic organization. The mixed railroad corporation was not only parent to “big” business in the United States; its leaders also defined the character of business-government relationships, the duties of corporation to public, and the responsibility of manager to investor. Customary procedures and standards of behavior for managers of the modern corporation were thus conceived in ideological twilight, and had become habitual before the individual entrepreneur achieved a firm grip on the corporate form. Perhaps from the divided loyalties of the public-spirited men who planned so boldly for early community growth there emerged the ethical confusion characteristic of subsequent corporate behavior.

. . . . The substantial energies of government, though, were employed more often for help than for hindrance to enterprise. The broad and well-documented theme reviewed here is that of public support for business development. Official vision and public resources have been associated so regularly with private skill and individual desire that the combination may be said to constitute a principal determinant of American economic growth. . . . Resolute Federal decision was in time revealed to be a key to remarkable productive achievement, most notably during the wars of the twentieth century. States and cities meanwhile transferred their record of debt from millions to billions as they constructed the nation's highways and public buildings, and extended their public services; . . . Rising constantly from the impulse to public-spirited undertakings, moreover, was the neo-mercantilism of regions and provinces of the American economy which came to replace the earlier and simpler competition of cities and states. Commercial clubs in the cities, industrial commissions in the states, and governors' conferences in the regions all joined in sponsorship of industrial expansion. The story sprawls out to ungovernable proportions to tax exemptions, police-guaranteed labor discipline, municipal power-plant construction, and on to RFC, TVA, and AEC. . . . From the grass roots putting up shoots before Chamber of Commerce buildings to the office of the President's Council of Economic Advisors there can be documented the unceasing pressure for public sponsorship of economic growth.



THE ISSUE OF FEDERAL REGULATION IN THE PROGRESSIVE ERA

THE STUDENT MAY WONDER ABOUT THE RELEVANCE AS WELL AS THE TENACITY of the Sumnerian view, if *in fact* Americans had for so long made extensive use of government to enhance their life chances. Part of the answer lies in historians' "monumental error" in failing to reveal that fact. For, as Professor Lively suggests, the error itself derived from a kind of self-inflicted blindness due to both interested and innocent motives, to the desire of vested interests to avoid public regulation, and to endemic perceptual limitations. When an occasional scholar, such as Guy Callender, discovered in 1902 the true measure of government intervention in finance, he was unable to account for ". . . this remarkable movement toward State enterprise here in America, where of all places in the world we should least expect to find it." Perhaps that expectation too often circumscribed the limits of scholarly inquiry, just as it clearly obfuscated contemporary thought. Then, too, when Americans have argued the merits of "government" intervention, from Jefferson's day to the present they have usually meant the *Federal* government. From the very moment that the Federal government first competed for authority with the several states, political rhetoricians have found it convenient to pair "the people" and "the states" as if they were identities having in common the dread of Federal power.

In any event, Americans did not readily understand or acknowledge the fact of broad government intervention, state and Federal, and in the late nineteenth century the prevailing Sumnerian view did not *approve* of the fact—did not consider it good or justifiable. Therefore, the issue of Federal intervention had to be debated during the Progressive Era virtually *ab initio* as to whether or not it was good social theory and equally as important as to whether or not it was good social policy.

Much of the debate, of course, was primarily *interested*. The excerpts presented here, however, have been selected for the manner in which they express a relatively high-level *disinterested* argument for or against intervention or particular forms of intervention. An effort has

also been made—partly in the interest of brevity—to present only the arguments which circulated in the main stream of American thought. Thus, Marxist, syndicalist, utopian, anarchist, and other “fringe” arguments have been omitted.

A.

THE INADEQUACIES OF STATE REGULATION

¶For many leaders of post-Civil War corporate enterprises, regulation by the separate states was for a time only too painful a reality. During the 1870's and 1880's, for example, many states passed laws, the so-called Granger laws, which placed railroads under severe controls. Few of these laws remained effective very long, and in 1886 the Supreme Court put a practical end to state regulation of railroads. The vacuum created by that decision made Federal regulation a logical necessity, and for once logic and the law seemed to march in step when Congress passed the Interstate Commerce Act in 1887. Most railroad leaders fought Federal regulation; but as other businesses took on a broad interstate character, Federal regulation offered some business men a preferable alternative to the confusion and petty harassment resulting from the multitude of state laws. In 1905, for example, Senator John F. Dryden of New Jersey introduced a bill to provide for Federal licensing of insurance companies with the argument: “Nearly all the presidents of insurance companies all over the country desire national supervision. . . . Every company would naturally prefer just one set of regulations, for that would make it so much easier to shape policy.”

Whatever Dryden had to say for his bill as “progressive” legislation may seem tainted by the fact that he was himself President of the Prudential Life Insurance Company. Louis D. Brandeis, the outstanding Massachusetts progressive, regarded the bill as a device to enhance the power of the corporations to do evil. Although Brandeis advanced no generalizations about the wisdom of Federal regulation from this particular case, many other progressives, especially among the Democrats, also viewed the Federal government's superseding of the states' restrictive powers with some suspicion. In 1908, at a conference of governors, Democratic Governor Joseph W. Folk, Missouri's most famous progressive, served as spokesman for fifteen state executives who demanded that the Federal government “return” to each of the states full power over all interstate corporations operating within its borders, including railroads. The demand was motivated at least in part by a partisan desire to blame the national Republican administration for failing to cope with prevalent corporate abuses; but it was also true that many reformers still hoped for a solution through uniform state laws.

By and large, however, the inadequacies of state regulation seemed manifest. In the following piece by Federal Judge Charles F. Amidon of North Dakota (1856-1937), we have a notably well-balanced presentation of the need for Federal regulation by a man who was generally considered a progressive by his contemporaries. Those who would

assume that progressivism was an "anti-corporation" reform movement might wish to question that designation; for Amidon clearly was not "anti-corporation." There is, of course, no over-riding reason for the historian to accept all contemporary labels at their face value. What are the values that Amidon identifies with "progress" and with his implied image of a "good society"? How do they compare with "progressive" values? Compare also Judge Amidon's reference to the rivalry of commercial centers with Professor Lively's allusion to the struggle for control of inland produce and access to markets. (Charles F. Amidon, "The Nation and the Constitution," an address before the American Bar Association, in *The Report of the Thirtieth Annual Meeting of the American Bar Association* August 27, 1907, pp. 463-85.)]

WITHIN THE last fifty years economic forces have been introduced into our life that are as revolutionary of pre-existing conditions as the introduction of gunpowder was of the state of feudalism. Seward's statement in the debate of 1850 that "Commerce is the god of boundaries and no man now living can tell its ultimate decree" is far more true at present than when it was uttered. When the constitution was adopted the unit of our social and business life was the commonwealth. . . . The union was political instead of industrial or commercial. Today our industry and our commerce are national. They are made aware of state lines only by conflicting and often narrowly selfish enactments. . . .

The new condition has manifested itself most conspicuously in two fields, the railroad and the interstate industrial corporation. . . .

Whenever a state prescribes a schedule of rates for local business, it thereby directly and necessarily regulates interstate business as well. . . . We deceive ourselves by a mere form of words when we speak of the separate regulation of local business by the state and through business by the nation. . . .

The chief domestic cause for the adoption of the constitution was to destroy the power of the states over interstate commerce. . . . Hitherto state regulation has been inefficient and for that reason alone its localizing power has not become manifest. But now . . . state authority is becoming organized, energetic and effective. If continued it will work its inevitable results. In commerce, as in politics, state governments will represent state interests. No rivalry can surpass that of our commercial centers, and the states in which they are located, let their power over carriers become effective, will exercise that power in support of their own cities. This is not theory. Only recently the commission of one of our most aggressive western states warned the railroads by a written communication that if they were not more considerate of the state as to interstate rates, the commission would retaliate by the exercise of its powers over local affairs. . . . The severest critic of the railroads cannot deny that their policy has been splendidly national, and the most potent single factor in the creation of our vast domestic commerce. In thus maintaining the commercial supremacy of the nation, they have been compelled to withstand the importunities and fierce wrath of local interests. Now, however, the conflict is to be transferred from this field

of economics to the field of government. Localism is to speak not by petition but by statute. Under this regime as governmental control increases in efficiency, the irrepressible conflict between local and national interests will increase in directness as well as in the frequency of its exhibition and the intensity of the passions aroused. . . .

Our whole history is a confirmation of the statement of Mr. Pinckney in the constitutional convention that "States pursue their interests with less scruple than individuals." . . . As Justice Miller points out in his lectures on the constitution, had it not been for the dominant authority of the central government, the general welfare would have been as completely sacrificed to local selfishness under the constitution as it was under the articles of confederation. . . .

The situation in the field of industry presents the same general features. To abolish local control over matters extending outside of the state was the origin not only of the article conferring power on the national government to regulate commerce among the states, but also of those provisions which forbid states to lay imposts or duties on exports or imports, and which secure to the citizens of each state the privileges and immunities of citizens of the several states. These restrictions were placed in the constitution not so much that men might be free, as that national commerce and industry might be free. They have been largely nullified in actual life by the fact that business is now carried on by corporations instead of persons. When the constitution was adopted only twenty-one corporations had been formed in the United States. These were mainly for the construction of canals and turnpikes. There was but one bank and two trading companies. As business agencies corporations had no part either in life or thought, consequently they had no place in the constitution. The Supreme Court has held that they are not citizens within the meaning of the Fifth Amendment and that each state may either wholly exclude them, or impose as conditions of their entering or remaining in the state such terms as local policy or interest may suggest. The result is that business which was intended to be free, has in fact become subject to local authority. The abuses of corporate organization and management have heretofore commended this exercise of local control. Ultimately, however, we shall become increasingly aware of its injustice and folly. Business cannot be conducted in this century except through the agency of corporations; but the very enlargement of that agency has caused industry, the same as commerce, to overleap the bounds of states, and thus become subject to governments whose only interest in them is that of the publican. . . . A condition which was [in 1789] . . . deemed sufficient to cause the framing and adoption of the constitution ought now to be adequate to compel the exercise of the power which the constitution vested in the federal government for the very purpose of controlling such conditions.

Divided control is inefficient in protecting the public, and grossly unjust in the burdens which it places upon the [interstate] carrier. . . . State legislatures have not yet learned that due process of legislation, like due process of law, proceeds upon inquiry, and legislates only after

hearing. Protection to the public and justice to the carrier alike unite in the demand for a single governmental control. . . . Regulation is now inefficient because divided. If the federal government shall take exclusive control, it will then be responsible alone for such a control as shall be both efficient and just. Public opinion will have a single point for its direction, and will not be dissipated among many conflicting authorities. . . . The subject is national, and the federal government with its national outlook can by organized investigation and accumulated experience best acquire the skill and knowledge necessary for its just and efficient regulation. . . .

In thought manufacture and commerce may be separated, but in business the former is always combined with the latter. No one ever manufactured except for the purpose of sale. Under the present regime of wide markets, large sales, and small profits, commerce has become the paramount feature even of manufacturing enterprises. . . . Our great corporations are now national in their character, and national and international in the scope of their operations. To regulate their formation is one of the most direct and efficient means of regulating their activities. For forty-five states to create corporations and the national government to regulate their most important business cannot fail to result in inefficiency and conflict. . . .

Our first great conflict between the states and the nation was waged over the subject of banking and finance. No sooner were we started under the constitution than the need of a national agency in that field was discovered. But the local jealousy of the states prevented its establishment for more than seventy-five years. During that period we were subject to all the injury and confusion of wild-cat banking under state authority. Banking and finance, however, were not more national at that time than commerce and industry have now become, and the same conflict is again presented in this new field. . . . A uniform authority in the field of interstate commerce and industry will be found as beneficent today as it was discovered to be in the field of finance and banking. . . . The problem of regulating these affairs has attained its present magnitude largely because the federal government has neglected to exercise its constitutional power over the subject in the course of its development. Until the interstate commerce act was passed in 1887 the negative power of the courts was the only federal control. Even by them till 1886 the states were sustained in their authority over interstate as well as domestic rates of carriers. The truth is that the national government has so long neglected its powers under the commerce clause of the constitution that now, when it tardily takes up its duties, it is charged by the states with usurpation. . . .

One hundred years ago those who opposed the adoption of the constitution made "Consolidation" their cry of alarm. Today those who oppose the control by the national government of the business affairs that have become national, raise the cry of "Centralization." The one cry is as foolish as the other. On both occasions the opposition is guilty of that highest political folly which consists in hanging to a theory regardless of changed conditions of life. Centralization has already taken

place out there in the world of commerce and industry. The only question remaining is, Shall the government take cognizance of the fact?

[For the most part, of course, the activation of the Federal government, either against or on behalf of various economic interests and developments, was very much a progressive cause. But the cause was a vastly complex one. Was Federal power to be used exclusively, or even primarily, to check abuses of private economic power? Or was it to be liberalizing as well as restrictive, positive as well as negative? Which elements of American society needed emancipating, and from what? Which tendencies needed checking?

B.

THEODORE ROOSEVELT'S VIEW

¶It was President Theodore Roosevelt who first made the argument for broad Federal intervention both popular and respectable. Though known as a "trust-buster" for his successful prosecution of the Northern Securities Company and the meat packing industry, Roosevelt is at least as well known for his defense of business consolidations in the name of productive efficiency. Roosevelt took an unequivocal stand in favor of regulated centralization of economic power in his famous speech at Osawatomie, Kansas (August 31, 1910), and in an article he wrote for *Outlook* called "The Trusts, The People, and The Square Deal" (November 18, 1911). It was this position which struck the issue between him and Woodrow Wilson in the "New-Nationalism-versus-the-New Freedom" presidential campaign of 1912. Actually, though, Roosevelt had adopted much the same position years earlier while he was still President, which created some ambivalence in his proposals for dealing with business consolidations. As a leading contemporary journalist caricatured Roosevelt's position: "'Th' trusts,' says he, 'are heejeous monstheres built up be th' enlightened intherprise iv th' men that have done so much to advance progress in our beloved country,' he says. 'On wan hand I wud stamp thim undher fut; on th' other hand not so fast.'" But there was no ambivalence in his view that private economic power had to be made to answer to public policy.

The excerpt presented below was selected because it illustrates Roosevelt's considered views while he was President, still several years away from leading an insurgent bandwagon against William Howard Taft or contending for the presidency as a third party candidate. The Bureau of Corporations had already been established, and the Elkins and Hepburn Railroad Acts had already been passed during his Administration. Roosevelt pressed for further intervention. Note how he pays his deference to Sumnerian individualism. How does he justify, nonetheless, the discretionary power he would place in the hands of government officials? What criteria does Roosevelt set for determining the need for restrictive action by those officials? What is the significance of T. R.'s distinction between evil-doing and mere law-breaking? (Theo-

dore Roosevelt, "Seventh Annual Message, Dec. 3, 1907," in James D. Richardson, ed., *A Compilation of the Messages and Papers of the Presidents*, XIV [New York: Bureau of National Literature, Inc. (1917)], pp. 7070 *et seq.*]

IN MY Message to Congress on December 5, 1905, I said:

"In our industrial and social system the interests of all men are so closely intertwined that in the immense majority of cases a straight-dealing man, who by his efficiency, by his ingenuity and industry, benefits himself, must also benefit others. Normally, the man of great productive capacity who becomes rich by guiding the labor of many other men does so by enabling them to produce more than they could produce without his guidance; and both he and they share in the benefit, which comes also to the public at large. . . . Yet, while not merely admitting, but insisting upon this, it is also true that where there is not governmental restraint or supervision some of the exceptional men use their energies, not in ways that are for the common good, but in ways which tell against this common good. The fortunes amassed through corporate organization are now so large, and vest such power in those that wield them, as to make it a matter of necessity to give to the sovereign—that is, to the Government, which represents the people as a whole—some effective power of supervision over their corporate use. In order to insure a healthy social and industrial life, every big corporation should be held responsible by, and be accountable to, some sovereign strong enough to control its conduct. I am in no sense hostile to corporations. This is an age of combination, and any effort to prevent all combination will be not only useless, but in the end vicious, because of the contempt for law which the failure to enforce law inevitably produces. We should, moreover, recognize in cordial and ample fashion the immense good effected by corporate agencies in a country such as ours. . . . The corporation has come to stay, just as the trade union has come to stay. . . . Each should be favored so long as it does good. But each should be sharply checked where it acts against law and justice.

"* * * The makers of our National Constitution provided especially that the regulation of interstate commerce should come within the sphere of the General Government. The arguments in favor of their taking this stand were even then overwhelming. But they are far stronger to-day, in view of the enormous development of great business agencies, usually corporate in form. Experience has shown conclusively that it is useless to try to get any adequate regulation and supervision of these great corporations by State action. Such regulation and supervision can only be effectively exercised by a sovereign whose jurisdiction is coextensive with the field of work of the corporations—that is, by the National Government. I believe that this regulation and supervision can be obtained by the enactment of law by the Congress * * * . Our steady aim should be, by legislation, cautiously and carefully undertaken, but resolutely persevered in, to assert the sovereignty of the National Government by affirmative action.

"This is only in form an innovation. In substance it is merely a

restoration; for from the earliest time such regulation of industrial activities has been recognized in the action of the lawmaking bodies; and all that I propose is to meet the changed conditions in such manner as will prevent the Commonwealth abdicating [*sic*] the power it has always possessed, not only in this country, but also in England before and since this country became a separate nation.

"It has been a misfortune that the National laws on this subject have hitherto been of a negative or prohibitive rather than an affirmative kind, and still more that they have in part sought to prohibit what could not be effectively prohibited, and have in part in their prohibitions confounded what should be allowed and what should not be allowed. It is generally useless to try to prohibit all restraint on competition, whether this restraint be reasonable or unreasonable; and where it is not useless it is generally hurtful. . . . What is needed is not sweeping prohibition of every arrangement, good or bad, which may tend to restrict competition, but such adequate supervision and regulation as will prevent any restriction of competition from being to the detriment of the public, as well as such supervision and regulation as will prevent other abuses in no way connected with restriction of competition."

I have called your attention in these quotations to what I have already said because I am satisfied that it is the duty of the National Government to embody in action the principles thus expressed.

No small part of the trouble that we have comes from carrying to an extreme the national virtue of self-reliance, of independence in initiative and action. It is wise to conserve this virtue and to provide for its fullest exercise, compatible with seeing that liberty does not become a liberty to wrong others. Unfortunately, this is the kind of liberty that the lack of all effective regulation inevitably breeds. . . . This does not mean that there should be any extension of Federal authority, for such authority already exists under the Constitution in amplest and most far-reaching form; but it does mean that there should be an extension of Federal activity. This is not advocating centralization. It is merely looking facts in the face, and realizing that centralization in business has already come and can not be avoided or undone, and that the public at large can only protect itself from certain evil effects of this business centralization by providing better methods for the exercise of control through the authority already centralized in the National Government by the Constitution itself. . . . The most vital need is in connection with the railroads. As to these, in my judgment there should now be either a national incorporation act or a law licensing railway companies to engage in interstate commerce upon certain conditions. The law should be so framed as to give to the Interstate Commerce Commission power to pass upon the future issue of securities, while ample means should be provided to enable the Commission, whenever in its judgment it is necessary, to make a physical valuation of any railroad. As I stated in my Message to the Congress a year ago, railroads should be given power to enter into agreements, subject to those agreements being made public in minute detail and to the consent of the Interstate Commerce Commission being first obtained. Until the National Government assumes

proper control of interstate commerce, in the exercise of the authority it already possesses, it will be impossible either to give or to get from the railroads full justice. . . .

Moreover, in my judgment there should be additional legislation looking to the proper control of the great business concerns engaged in interstate business, this control to be exercised for their own benefit and prosperity no less than for the protection of investors and of the general public. . . . It is profoundly immoral to put or keep on the statute books a law, nominally in the interest of public morality, that really puts a premium upon public immorality, by undertaking to forbid honest men from doing what must be done under modern business conditions, so that the law itself provides that its own infraction must be the condition precedent upon business success. . . . In my Message to the Congress a year ago, in speaking of the antitrust laws, I said:

"The actual working of our laws has shown that the effort to prohibit all combination, good or bad, is noxious where it is not ineffective. . . . It is unfortunate that our present laws should forbid all combinations instead of sharply discriminating between those combinations which do evil * * *. Often railroads would like to combine for the purpose of preventing a big shipper from maintaining improper advantages at the expense of small shippers and of the general public * * *. No more scathing condemnation could be visited upon a law than is contained in the words of the Interstate Commerce Commission when, in commenting upon the fact that the numerous joint traffic associations do technically violate the law, they say: 'The decision of the United States Supreme Court in the *Trans-Missouri* case and the *Joint Traffic Association* case has produced no practical effect upon the railway operations of the country. Such associations, in fact, exist now as they did before these decisions, and with the same general effect. In justice to all parties, we ought probably to add that it is difficult to see how our interstate railways could be operated with due regard to the interest of the shipper and the railway without concerted action of the kind afforded through these associations.'

"This means that the law as construed by the Supreme Court is such that the business of the country can not be conducted without breaking it." . . .

The antitrust law should not be repealed; but it should be . . . so amended as to forbid only the kind of combination which does harm to the general public, such amendment to be accompanied by, or to be an incident of, a grant of supervisory power to the Government over these big concerns engaged in interstate business. This should be accompanied by provision for the compulsory publication of accounts and the subjection of books and papers to the inspection of the Government officials. A beginning has already been made for such supervision by the establishment of the Bureau of Corporations. . . .

A combination should not be tolerated if it abuses the power acquired by combination to the public detriment. No corporation or association of any kind should be permitted to engage in foreign or interstate commerce that is formed for the purpose of, or whose opera-

tions create, a monopoly or general control of the production, sale, or distribution of any one or more of the prime necessities of life or articles of general use and necessity. Such combinations are against public policy; they violate the common law; the doors of the courts are closed to those who are parties to them, and I believe the Congress can close the channels of interstate commerce against them for its protection. . . . Among the points to be aimed at should be the prohibition of unhealthy competition, such as by rendering service at an actual loss for the purpose of crushing out competition, the prevention of inflation of capital [i.e., stock watering], and the prohibition of a corporation's making exclusive trade with itself a condition of having any trade with itself [i.e., tying clauses]. Reasonable agreements between, or combinations of, corporations should be permitted, provided they are submitted to and approved by some appropriate Government body. . . .

It is certain that for some time to come there will be a constant increase absolutely, and perhaps relatively, of those among our citizens who dwell in cities or towns of some size and who work for wages. This means that there will be an ever-increasing need to consider the problems inseparable from a great industrial civilization. . . . Much of the work for the accomplishment of this end must be done by the individuals concerned themselves, whether singly or in combination; and the one fundamental fact that must never be lost track of is that the character of the average man, whether he be a man of means or a man who works with his hands, is the most important factor in solving the problem aright. But it is almost equally important to remember that without good laws it is also impossible to reach the proper solution. It is idle to hold that without good laws evils such as child labor, as the over-working of women, as the failure to protect employees from loss of life or limb, can be effectively reached, any more than the evils of rebates and stock-watering can be reached without good laws. To fail to stop these practices by legislation means to force honest men into them. . . . If the States will correct these evils, well and good; but the Nation must stand ready to aid them. . . .

C.

WOODROW WILSON'S VIEW

¶The emphasis of Roosevelt's argument for Federal regulation of interstate corporations centered on his sympathy with the popular sentiment that "where there is no governmental restraint, some men use their energies not in ways that are for the common good." He would subject all things to the test of the commonweal. "We are for the liberty of the individual," he declared in 1910, "up to, and not beyond, the point where it becomes inconsistent with the welfare of the community." ". . . Every man," he asserted on another occasion, "holds his property subject to the general right of the community to regulate its use to whatever degree the public welfare may require it." Public opinion in the Progressive Era inclined favorably toward these views.

Curiously, though, many men who were themselves the object of popular hostility also urged Federal regulation as a buffer against just such sentiment. In hearings before the congressional committee investigating the United States Steel Corporation in 1911, for example, Elbert H. Gary, Chairman of the Board of the Corporation, argued in favor of a government commission which could tell the corporations "exactly where we stand," so that "we could be freed from danger, trouble, and criticism by the public. . . ." Almost two decades earlier, United States Attorney General-designate Richard Olney had advised the President of the Chicago, Burlington & Quincy Railroad not to seek the abolition of the Interstate Commerce Commission because, he wrote, "The Commission . . . is, or can be made, of great use to the railroads. . . . The older such a commission gets to be, the more inclined it will be found to take the business and railroad view of things. It thus becomes a sort of barrier between railroad corporations and the people and a sort of protection against hasty and crude legislation hostile to railroad interests. . . . The part of wisdom is not to destroy the Commission, but to utilize it." Since this was stated in a private letter to an agitated correspondent, it must not be taken as expressing the sum of Olney's considered view of the I.C.C.; but it was clearly a view that had great potential appeal to leaders of "Big Business." It helps explain why the Progressive party of 1912 (the only major party in the campaign which lacked an anti-trust plank) had as its National Chairman George W. Perkins, who was a partner in J. P. Morgan and Company and a directing figure in New York Life Insurance, International Harvester, and United States Steel. As the debate waxed, the problem seemed to take the form expressed so well by the great liberal historian, Vernon Louis Parrington: "We must have a political state powerful enough to deal with corporate wealth, but how are we going to keep that state with its augmenting power from being captured by the force we want it to control?"

The way to do this according to some progressives (especially followers of Louis D. Brandeis and Woodrow Wilson, the architects of the "New Freedom") was to keep the forces to be controlled sufficiently scattered and mutually competitive so that (1) no single force would be capable of capturing the government, and (2) the economic order would remain a "free field" for individual enterprise and initiative. It was "perfectly clear" to Wilson no less than it was to Roosevelt that their generation was "just upon the threshold of a time when the systematic life of this country will be sustained, or at least supplemented, at every point by governmental activity." But the object of governmental activity, as Wilson viewed it, should be to seek a restoration of the conditions in which the freely operating *market* mechanism (rather than the *political* mechanism) disinterestedly distributed material wealth and life chances among its participants. The government's objective should be, in a word, to seek to make "*laissez-faire*" a practicable policy for a society that would be, not benevolent perhaps, but emancipating and *just*.

Roosevelt and the "New Nationalists" retorted that such a program, even if feasible, acted against the manifest tendencies of the industrial

revolution which taken as a whole was beneficent. To obstruct or reverse the consolidation movement, one critic objected, "would be breaking up the beginning of a collective organization, thwarting the possibility of cooperation, and insisting upon submitting industry to the wasteful, the planless scramble of little profiteers." The "New Freedom" offered "no freedom for the nation from the narrowness, the poor incentives, the limited vision of small competitors." "The fact is," said Roosevelt, "that many of the men who have called themselves Progressives, and who certainly believe that they are Progressives, represent in reality in this matter not progress at all but a kind of sincere rural Toryism."

The following passages are taken from a post-election published version of some of Wilson's 1912 campaign speeches. Although an effort has been made to eliminate the more partisan flourishes of campaign rhetoric and to present the strictly serious side of the argument, some rhetoric inevitably remains. For example, as Wilson chose to define "trusts" (they "buy efficiency out of business"), he leaves little room for anyone to disagree about being "for big business and against the trusts." As a campaigner, Wilson had to exaggerate the difference between his and his opponent's attitude toward monopoly. At times, for effect, Wilson seems to use the words "trusts," "monopolies," and "great corporations" interchangeably and with equal disapprobation; at other times the distinctions between them are crucial. He is "not afraid" of a corporation, he says, "no matter how big it grows," if it achieves its bigness by "the legitimate processes of business." But how does this square with his objection further on that "all [Roosevelt] explicitly complains of is lack of publicity and lack of fairness; not the exercise of power. . ." ? On the other hand, most of the excerpts below present the case against the New Nationalism with telling force.

The student may still ponder some problems which Wilson poses perhaps inadvertently. For example, how does Wilson's proposal, "to see to it that the methods by which monopolies have been built up are legally made impossible," elude the perils which Wilson foresees "if the government is to tell big businessmen how to run their business"? A fundamental difference between the New Nationalist and the New Freedom position remains: One side favors dispersion of private power; the other, concentration and control. Is there a point, though, at which the difference appears to grow blurry? How much does the difference rest on divergent social values? How far does each side stray from Sumner's assertion that "it is not at all the function of the State to make men happy"? (Woodrow Wilson, *The New Freedom* [Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1961 ed.], pp. 101-32.)

I ADMIT the popularity of the theory that the trusts have come about through the natural development of business conditions in the United States, and that it is a mistake to try to oppose the processes by which they have been built up, because those processes belong to the very nature of business in our time, and that therefore the only thing we can do, and the only thing we ought to attempt to do, is to accept them as

inevitable arrangements and make the best out of it that we can by regulation.

I answer, nevertheless, that this attitude rests upon a confusion of thought. Big business is no doubt to a large extent necessary and natural. The development of business upon a great scale . . . of co-operation, is inevitable, and, let me add, is probably desirable. But that is a very different matter from the development of trusts, because the trusts have not grown. They have been artificially created; they have been put together, not by natural processes, but by the will, the deliberate planning will, of men who were more powerful than their neighbors in the business world, and who wished to make their power secure against competition. . . .

Did you ever look into the way a trust was made? It is very natural, in one sense, in the same sense in which human greed is natural. If I haven't efficiency enough to beat my rivals, then the thing I am inclined to do is to get together with my rivals and say: "Don't let's cut each other's throats; let's combine and determine prices for ourselves; determine the output, and thereby determine the prices: and dominate and control the market." That is very natural. That has been done ever since freebooting was established. That has been done ever since power was used to establish control. The reason that the masters of combination have sought to shut out competition is that the basis of control under competition is brains and efficiency. I admit that any large corporation built up by the legitimate processes of business, by economy, by efficiency, is natural; and I am not afraid of it, no matter how big it grows. It can stay big only by doing its work more thoroughly than anybody else. And there is a point of bigness,—as every business man in this country knows, though some of them will not admit it,—where you pass the limit of efficiency and get into the region of clumsiness and unwieldiness. . . .

I take my stand absolutely, where every progressive ought to take his stand, on the proposition that private monopoly is indefensible and intolerable. And there I will fight my battle. And I know how to fight it. . . . What these gentlemen do not want is this: They do not want to be compelled to meet all comers on equal terms. I am perfectly willing that they should beat any competitors by fair means; but I know the foul means they have adopted, and I know that they can be stopped by law. . . .

I have been told by a great many men that the idea I have, that by restoring competition you can restore industrial freedom, is based upon a failure to observe the actual happenings of the last decades in this country; because, they say, it is just free competition that has made it possible for the big to crush the little. I reply, it is not free competition that has done that; it is illicit competition. It is competition of the kind that the law ought to stop, and can stop,—this crushing of the little man.

You know, of course, how the little man is crushed by the trusts. He gets a local market. The big concerns come in and undersell him in his local market, and that is the only market he has; if he cannot make a profit there, he is killed. They can make a profit all through the rest

of the Union, while they are underselling him in his locality, and recouping themselves by what they can earn elsewhere. . . . In as much as they rise up only one by one, these big concerns can see to it that new competitors never come into the larger field. . . . Unless you have unlimited capital (which of course you wouldn't have when you were beginning) or unlimited credit (which these gentlemen can see to it that you shan't get), they can kill you out in your local market any time they try. . . .

That is the difference between a big business and a trust. A trust is an arrangement to get rid of competition, and a big business is a business that has survived competition by conquering in the field of intelligence and economy. A trust does not bring efficiency to the aid of business; it buys efficiency out of business. I am for big business, and I am against the trusts. . . .

The doctrine that monopoly is inevitable and that the only course open to the people of the United States is to submit to and regulate it found a champion during the campaign of 1912 in the new party, or branch of the Republican party, founded under the leadership of Mr. Roosevelt, with the conspicuous aid,—I mention him with no satirical intention, but merely to set the facts down accurately,—of Mr. George W. Perkins, organizer of the Steel Trust and the Harvester Trust, and with the support of more than three millions of citizens, many of them among the most patriotic, conscientious, and high-minded men and women of the land. The fact that its acceptance of monopoly was a feature of the new party platform from which the attention of the generous and just was diverted by the charm of a social program of great attractiveness to all concerned for the amelioration of the lot of those who suffer wrong and privation . . . render[s] it not less necessary to reflect on the significance of the confession made for the first time by any party in the country's history. . . .

Mr. Roosevelt attached to his platform some very splendid suggestions as to noble enterprises which we ought to undertake for the uplift of the human race; but when I hear an ambitious platform put forth, I am very much more interested in the dynamics of it than in the rhetoric of it. . . . You know that Mr. Roosevelt long ago classified trusts for us as good and bad, and he said that he was afraid only of the bad ones. Now he does not desire that there should be any more bad ones, but proposes that they should all be made good by discipline, directly applied by a commission of executive appointment. All he explicitly complains of is lack of publicity and lack of fairness; not the exercise of power, for throughout that plank the power of the great corporations is accepted as the inevitable consequence of the modern organization of industry. All that it is proposed to do is to take them under control and regulation. The national administration having for sixteen years been virtually under the regulation of the trusts, it would be merely a family matter were the parts reversed and were the other members of the family to exercise the regulation. And the trusts, apparently, which might in such circumstances, comfortably continue to administer our af-

fairs under the mollifying influences of the federal government, would then, if you please, be the instrumentalities by which all the humanistic, benevolent program of the rest of that interesting platform would be carried out! . . .

Again, I absolutely protest against being put into the hands of trustees. . . . The justice proposed is very beautiful; it is very attractive; there were planks in that platform which stir all the sympathies of the heart; they proposed things that we all want to do; but the question is, Who is going to do them? Through whose instrumentality? . . .

The only thing that the third party proposes should be done, is to set up a commission to regulate [monopolies]. . . . It says: "We will not undertake, it were futile to undertake, to prevent monopoly, but we will go into an arrangement by which we will make these monopolies kind to you. We will guarantee that they shall be pitiful. We will guarantee that they shall pay the right wages. We will guarantee that they shall do everything kind and public-spirited, which they have never heretofore shown the least inclination to do." . . .

We are at the parting of the ways. We have, not one or two or three, but many, established and formidable monopolies in the United States. We have, not one or two, but many, fields of endeavor into which it is difficult, if not impossible, for the independent man to enter. We have restricted credit, we have restricted opportunity, we have controlled development, and we have come to be . . . no longer a government by free opinion . . . but a government by the opinion and the duress of small groups of dominant men.

If the government is to tell big business men how to run their business, then don't you see that big business men have to get closer to the government even than they are now? Don't you see that they must capture the government, in order not to be restrained too much by it? Must capture the government? They have already captured it. Are you going to invite those inside to stay inside? They don't have to get there. They are there. Are you going to say: "You didn't get into the house the right way, but you are in there, God bless you; we will stand out here in the cold and you can hand us out something once in a while?" . . .

I challenge the [Roosevelt] program in its fundamentals as not a progressive program at all. Why did Mr. Gary suggest this very method when he was at the head of the Steel Trust? Why is this very method commended here, there, and everywhere by the men who are interested in the maintenance of the present economic system of the United States? Why do the men who do not wish to be disturbed urge the adoption of this program? . . .

I find, then, the proposition to be this: That there shall be two masters, the great corporation, and over it the government of the United States; and I ask who is going to be master of the government of the United States? . . .

Moreover, under the system proposed, most employers,—at any rate practically all the most powerful of them,—would be, to all intents and purposes, wards and proteges of the government which is the master

of us all; for no part of this program can be discussed intelligently without remembering that monopoly, as handled by it, is not to be prevented, but accepted. . . . So that the chief employers will have this tremendous authority behind them: what they do, they will have the license of the federal government to do.

And it is worth the while of the workingmen of the country to recall what the attitude toward organized labor has been of these masters of consolidated industries whom it is proposed that the federal government should take under its patronage as well as under its control. They have been the stoutest and most successful opponents of organized labor, and they have tried to undermine it in a great many ways. . . . Rights under these various arrangements are not legal rights. They are merely privileges which employees enjoy only so long as they remain in the employment and observe the rules of the great industries for which they work. . . .

When you have thought the whole thing out, therefore, you will find that the program of the new party legalizes monopolies and systematically subordinates workingmen to them and to plans made by the government both with regard to employment and with regard to wages. Take the thing as a whole, and it looks strangely like economic mastery over the very lives and fortunes of those who do the daily work of the nation; and all this under the overwhelming power and sovereignty of the national government. . . .

It is perfectly clear to every man who has any vision of the immediate future, who can forecast any part of it from the indications of the present, that we are just upon the threshold of a time when the systematic life of this country will be sustained, or at least supplemented, at every point by governmental activity. And we have now to determine what kind of governmental activity it shall be; whether, in the first place, it shall be direct from the government itself, or whether it shall be indirect, through instrumentalities which have already constituted themselves and which stand ready to supersede the government. . . .

We have a great program of governmental assistance ahead of us in the co-operative life of the nation; but we dare not enter upon that program until we have freed the government. That is the point. Benevolence never developed a man or a nation. We do not want a benevolent government. We want a free and a just government. . . .

Politics differs from philanthropy in this: that in philanthropy we sometimes do things through pity merely, while in politics we act always, if we are righteous men, on grounds of justice and large expediency for men in the mass. Sometimes in our pitiful sympathy with our fellow-men we must do things that are more than just. We must forgive men. . . . But the law does not forgive. It is its duty to equalize conditions, to make the path of right the path of safety and advantage, to see that every man has a fair chance to live and to serve himself, to see that injustice and wrong are not wrought upon any. . . .

America stands for opportunity. America stands for a free field and no favor. . . . Our purpose is the restoration of freedom. We purpose

to prevent private monopoly by law, to see to it that the methods by which monopolies have been built up are legally made impossible. We design that the limitations on private enterprise shall be removed, so that the next generation of youngsters, as they come along, will not have to become proteges of benevolent trusts, but will be free to go about making their own lives what they will. . . .



A MORE DETAILED LOOK AT THE PROBLEM: THE CASE OF THE RAILROADS

FROM THE ARGUMENT ABOUT THE WISDOM OF FEDERAL REGULATION AND THE debate over the proper character of such regulation, we move now to a more detailed consideration of regulation in a specific industry: the railroads.

A.

THE CASE FOR FEDERAL RATE-MAKING

¶The following excerpts are taken from the most authoritative book on the subject in the Progressive Era, one which scholars still use regularly. At the time it was written, Congress had already equipped the Interstate Commerce Commission with substantial rate-making powers. Professor William Z. Ripley of Harvard University, frequently a government consultant on economic problems, presented a consideration of the potential uses of regulation completely uninhibited by arguments which would claim the sacrosanctity of private property. As he says, railroad rate regulation may only be a prelude to more thorough government control over the economy. This called for an honest and forthright discussion; he would not be diverted by political bogeys.

But then neither should the student be diverted by Ripley's obvious integrity. What did Ripley mean by phrases like "an *abnormal* disregard of distance," "*undue* development of special commodity rates," the "*rights* of geographical location," and "territory *naturally* tributary to" another? Who would Ripley have had answer these questions? Despite Ripley's easy dismissal of the problem, is it altogether "obstructionistic" to expect statesmen and economists to solve the problem of what constitutes a "natural market" which "rightly belongs to any given economic agent" *before* they enter the process of determining railroad rates? Did Ripley's advocacy of Federal controls rest solely on his objection to railroad *abuses*? Or did he display a social philosophy which required

Federal regulation whether or not railroad managers abused their power? What *were* Ripley's underlying social assumptions and values? Was Ripley's approach more of the "New Nationalist" or the "New Freedom" variety? (William Z. Ripley, *Railroads: Rates and Regulation* [New York: Longmans, 1912], pp. v-vi, 35-43, 108-9, 118, 133-34, 152-63. Courtesy of David McKay Co., Inc.)

SINCE 1887 when the Act to Regulate Commerce was passed, as the problem of public regulation has gradually unfolded . . . the conviction has steadily grown that, as one of the most fundamental agents in our American economic affairs, the subjection of transportation to public control was a primary need of the time. . . .

Nor is . . . the assumption by public authority of its inherent right to control railroads, as narrow an interest as it at first appears. Transportation, as a service, is the commodity produced by common carriers. The manner in which the price of this commodity has been brought under governmental regulation has a direct bearing upon another problem just beginning to open up; namely that of the control by the state of the prices of other things. It is not unlikely, in my judgment, that the final solution of the so-called Trust Problem in the United States, whether for good or ill, may ultimately contain as one important feature, the determination by governmental authority of reasonable prices for such prime necessities of life as milk, ice, coal, sugar and oil, when produced under monopolistic conditions. This view is shared by my colleague Professor [Frank W.] Taussig in his "Principles of Economics." It is also distinctly set forth by President [Charles R.] Van Hise of the University of Wisconsin, in his recent "Concentration and Control." When the seed of such an industrial policy is planted, as I believe it possible in time, the soil will have been richly prepared for its reception by our experience in the determination of reasonable charges for the services of railroads and other public utilities. . . .

The dominating events in our later economic history, so far as railroads are concerned, have been the period of severe distress and prostration following the panic of 1893; a subsequent revival of prosperity, with unprecedented demands for transportation during the ten years thereafter until 1907; and a movement toward consolidation of the railroad net into great territorial systems, notably during the two years after 1898, as a result of which competition was practically eliminated from all railroad business. The long decline in freight rates was succeeded after 1900 by a steady rise of charges; the phenomenal prosperity and consolidations led to wild speculative outbreaks on the stock exchanges, especially in 1901 and 1906; and the spread of industrial consolidation enormously emphasized the evils and abuses of personal discrimination and favoritism. As a result of these influences there arose in turn, after 1900, an irresistible demand for greater governmental supervision, both of rates and of finance. . . .

Probably the major portion of tonnage on American railways moves under special or commodity rates. . . . These special rates are made with a view to particular circumstances prevalent at the time. . . . The

competition of markets . . . is of fundamental and conclusive importance in the determination of freight rates. Commercial competition deals not with a mere choice of routes, but with alternative markets. The carriers act, not independently and of their own volition, but only as agents or representatives for their constituents, the shippers. They may become tools or weapons in the hands of merchants or manufacturers who are the real contestants. It is largely in this sense that it is so often alleged, and rightfully, that railway traffic managers oftentimes do not *make* rates at all. Their energies are bent to the analysis of those circumstances by which their rates are made for them. . . .

The vast extent of the United States, the necessity of transporting commodities great distances at low cost and the progressiveness of railway managers, has led to an extraordinary development of the . . . principle of the flat rate, based upon the theory that distance is a quite subordinate, if not indeed entirely negligible, element in the construction of freight tariffs under circumstances of competition. . . . It is the theory upon which the southern basing-point system is founded; and it is the common practice in making rates into and out of New England—being in fact vital to the continued prosperity of this out-of-the-way territory. . . . The essential principle of such special rates . . . is that of . . . a rate fixed in accordance with what the traffic will bear, without regard to the element of cost, that is to say, of distance. . . .

Elasticity and quick adaptation to the exigencies of business are peculiarities of American railway operation. Our railway managers have always been most progressive in seeking in and out of season, to develop new territory and build up traffic. The strongest contrast between Europe and the United States lies in this fact. European railways more often take business as they find it. Our railways *make* it. Much of this business is made possible only by special rates adapted to the case in hand. These need not be secret or discriminating. . . . For although offered with reference to particular cases, they may be open to all comers. The economic justification lies in the fact that the railway can afford to make a low rate, leaving a bare margin of profit above the *extra* cost of adding this traffic to that which is already in motion. Such rates cannot exceed a definite figure based upon what the traffic will bear. A higher rate than this would kill the business. Something is contributed toward fixed charges by the new traffic, so far as the railway is concerned; and at the same time the shipper on his part is enabled to enlarge his operations. . . . Railway representatives rightfully insist upon these special rates . . . as a boon to the commercial world. They contrast them with the hard and fast schedules of European railways. They allege that such elasticity loosens the joints of competition, "keeps everyone in business," equalizes prices over large areas, and is in fact the life of trade. One of the stock objections to railway regulation is that it may lessen this elasticity, "substitute mile posts for brains," and produce stagnation in place of activity.

Paradoxical as it may seem, a certain rigidity of rate schedules is a natural consequence of the very delicacy with which individual rates are adjusted to meet the demands of trade. Each road is jealously and

aggressively alert to protect its own constituency regardless of the rights of others. . . . Thus, for example, in the South the Southern Railway for some time was willing to concede, as a measure of justice, a reduction of rates on cotton from Mississippi river points to the mills in North and South Carolina. The growth of the textile industry had resulted in a demand for cotton far exceeding the production of the Carolinas. . . . The Carolina mills were, however, compelled to pay a higher rate upon cotton from such points as Memphis than was paid for the long haul up to New England. . . . This was obviously unjust. But the Southern Railway alone, interested in the welfare of its Carolina clients, was powerless to act without the consent of its competitors operating from Memphis west of the Alleghanies. These latter lines, having no interest in the southern mills and a unity of interest in the long haul traversed to New England, sought to prevent an equalization of the differences. Controlling rates also on cotton for export to various seaports, they were for a long time able to prevent a change. On the other hand, in the same territory the railways operating south from Cincinnati and Louisville desired to reduce rates on manufactured products from the Central West. These were the very lines which in the former instance prevented the reduction of cotton rates on the Southern Railway to Carolina points, by threats to meet such reductions by cutting their own rates on cotton going north through the Ohio gateways. Yet a reduction of their rates on manufactures for building up western trade threatened the business of the Southern Railway, which had been mainly interested in the traffic from Atlantic seaboard points. It may readily be seen that this situation, extending to practically every important point, "jacked up" all these rates, not because of their inherent reasonableness and not even because the railways independently acknowledged them to be just, but simply and solely because any disturbance of this house of cards might lead to a general downfall of the whole system. . . .

. . . [On the other hand,] the elasticity of railway rates in the United States . . . at times . . . has been carried to an extreme. Stability and certainty have been treated as of secondary importance. Particular shippers have been aided, but the general interests of trade have suffered some injurious consequences. . . . In the first place railway tariffs have in the past undoubtedly been too voluminous and complex. . . . The second disadvantage of too great elasticity in freight rates is that it may, at times, promote rather than lessen that state of economic unrest inevitable in all business, especially in a new country. Under a continual disturbance of rates, the merchant is unable with security to enter into long-time contracts. Rates are sometimes changed, not to suit the shipper but to serve the railways' interests. Sometimes traffic may be diverted from its natural channels. The spirit of initiative and self-reliance on the part of shippers may be undermined. Persistent titillation of competition may be pleasant for a time, but its final results may be injurious. Constant appeal to the traffic manager of his road for aid and comfort may quite naturally divert the shipper's attention from an aggressive commercial policy which would render him independent of minor changes

in freight rates. . . . One of the positive advantages of governmental regulation of railway rates is that it contributes to stability. . . .

Special rates which create new business should be carefully distinguished from special rates which merely wrest business from other carriers or markets. . . . A significant feature of commercial competition is the utilization of distant markets as available "dumping grounds" for the surplus products left over from the local or natural market. In the St. Louis Business Men's League case [for example] the Pacific coast jobbers complained that the large distributing houses in the Middle West thus invaded their territory. . . . The Florida orange growers protest against the relatively lower rate on California fruit, which is carried twice the distance for less money per box. This, it is urged, enables the western grower, having glutted his natural market in the Middle West, to "dump" his surplus into the eastern field, to which alone the Florida orange is restricted. . . . This raises at once the much broader question as to what constitutes a "natural market" or the "natural territory" which rightfully belongs to any given economic agent. It is, however, too extended an issue to be discussed at this time.

Too many special commodity rates, intended to meet the needs of particular shippers instead of increasing new business, may merely bring about economic waste through exchange of fields naturally tributary to other centres. Whenever a community producing a surplus of a given commodity supplies itself, nevertheless, with the same commodity from a distant market, economic loss results. Numerous instances could be cited where identical products are redistributed after a long carriage to and from a distant point in the very area of original production. . . . [Ripley cites several cases.] Is not this an economic anomaly? Two producers, presumably of equal efficiency, are each invading the territory naturally tributary to the other and are enabled to do so by reason of the railway policy of "keeping everyone in business." . . . No one questions for a moment that the widening of the sphere of competition by transportation agencies is a service of incalculable benefit to the country. But it should also be borne in mind that superfluous transportation is economic waste. The industrial combinations in seeking to effect a strategic location of their factories in order to divide the field have apparently come to a full recognition of this fact.

A fourth objection to undue development of special commodity rates is that they may entail increased burdens upon the local constituency of each railway. . . . It is plain that each shipment which fails to bear its due proportion of fixed charges, even though contributing something thereto, leaves the weight of interest and maintenance charges upon the shoulders of the local shipper. . . . Momentous social consequences may result. Not only the cost of doing business, but the expense of living in the smaller places is increased. One of the most dangerous social tendencies at the present time is the enormous concentration of population and wealth in great cities. Increased efficiency and economy in production are much to be desired; but social and political stability must not be sacrificed thereto. Is it not possible that a powerful decentralizing influence may be exerted by checking this

indiscriminate and often wasteful long-distance competition, through greater insistence upon the rights of geographical location?

Finally, an abnormal disregard of distance, which is always possible in the making of special rates to meet particular cases, may bring about a certain inelasticity of industrial conditions. . . . The rise of new industries may be hindered; or the well-merited relative decline of old ones under a process of natural selection may be postponed or averted. . . . At times there may be danger of perpetuating an industry in a district, regardless of the physical disabilities under which it is conducted. One cannot for a moment doubt the advantages of a protective policy on the part of railways; safe-guarding industry against violent dislocating shocks. An inevitable transition to new and perhaps better conditions may perhaps be rendered easier to bear. To New England, constantly exposed to the competition of new industries rising in the West, this policy has been of inestimable value. On the other hand, it is incontestable that in the long run the whole country will fare best when each industry is prosecuted in the most favored location, conditions of marketing as well as of mere production being always considered. . . . Each particular case, however, must be decided on its merits. Our purpose is not to pass judgment on any one, but merely to call attention to the possible effect of such practices upon the process of industrial development.

Centralization, or concentration of population, industry and wealth is characteristic of all progressive peoples at the present time. Great economic advantages, through division of labor and cheapened production, have results; but, on the other hand, manifold evils have followed in its train. . . . Many staple industries, utilizing the raw material at their doors, might supply the needs of their several local constituencies, were it not that their rise is prevented by long-distance rates from remote but larger centres of production. Denver, in striving to establish paper mills to utilize its own Colorado wood pulp, is threatened by the low rates from Wisconsin centres. Each locality, ambitious to become self-supporting, is hindered by the persistency of competition from far away cities. This is particularly true of distributive business. The overweening ambition of the great cities to monopolize the jobbing trade, regardless of distance, has already been discussed. And it follows, of course, that the larger the city the more forcibly may it press its demands upon the carriers for low rates to the most remote hamlets. The files of the Interstate Commerce Commission are stocked with examples of this kind. The plea of the smaller cities and the agricultural states—Iowa, for example—for a right to share in the jobbing naturally tributary to them by reason of their location, formed no inconsiderable element in the recent popular demand for legislation by the Federal government.

B.

THE PERILS OF FEDERAL RATE-MAKING

¶In the Hepburn Act of 1906, Congress first granted the Interstate Commerce Commission the power to set a ceiling on rates following a

shipper's complaint of excessive charges by a railroad and subject to judicial review. Republican Congressman Samuel W. McCall of Massachusetts opposed the Act on fundamental principles. The bill did not immediately threaten his state's interests, and only one of his colleagues joined him in opposition. Since, as Ripley pointed out, New England enjoyed special low rates compared to other productive centers in the country, what that section had to fear was a commission which could prevent railroads from cutting rates, not one which could only set maximum rates and then only on complaint in particular cases. But for McCall, even the limited provisions of the Hepburn bill represented "the opening edge of the wedge" which would lead the way to "political rate-making." His speech in Congress on February 2, 1906, excerpts from which follow, was an unusually astute and persuasive performance for a member of the Old Guard which customarily used power rather than persuasion. Though the Ripley book had not yet been written, note how McCall challenged several of the positions which the Harvard economist espoused. (Harvard, incidentally, lay within McCall's congressional district.) (*Congressional Record*, 59th Congress, 1st Session, pp. 1969-73.)]

Mr. CHAIRMAN . . . What is demanded to meet the real evil . . . is legislation making clear beyond question the right of every man to equal treatment and giving him the amplest remedy for every violation of his right. The private car, refrigerated car, the industrial [rail] switch, receiving a part of the through rate as if it were an independent line, every instrument of favoritism and injustice had justly received public condemnation. . . . Rebates and discrimination in all their protean forms were the real evil. . . . [But there is] no possible relation between the giving of rebates and the fixing of rates by a commission. . . . [A] railroad could as easily give a criminal rebate from a rate fixed by a commission as from one fixed by itself. . . .

Do we want rate making by a Government board? . . . It is upon the advocates of this bill to show that we should set aside the American system of fixing freight rates which has given us rates hardly half as high as are paid by the other great countries of the world, although our railroads pay their labor twice the wages paid in the other countries. . . . Magnificent platitudes about eminent domain and our duty to exercise the great commerce powers of the Constitution will not sustain the burden. . . .

Take first the experience of Germany, which for more than a quarter of a century has had rates fixed by the Government. In the case of Germany . . . the Government owns the railroads. . . . The state is merely managing its own property and manfully paying the bills. In that country [in order to avoid "discrimination"] the rates were made upon a mileage basis, and this difficulty was at once encountered. If the rates were high enough per mile so that traffic hauled for a short distance would yield a net revenue, they would be so high for a long haul as to be practically prohibitive of long-distance traffic; and on the other hand, if the mileage rate were so low that merchandize could be carried

a great distance profitably, the short-distance traffic would be carried at a loss. The German Government made repeated attempts to [taper the rates, so that it, for example] . . . would permit the wheat of eastern Germany to find its way by rail to the great manufacturing centers along the Rhine. Saxony, in the center of Germany, also produces wheat and the Saxon millers and landowners contended that they had a "natural right" to the market in their neighborhood, and that it was a discrimination for the Government to bring the wheat of eastern Germany at an exceptionally low rate to western Germany in competition with the wheat and flour of Saxony. The German Government is a reasonably autocratic government, and yet, resist as it would, it was finally compelled to yield and to reestablish the mileage rate; . . . [so that] 125 miles was the maximum distance at which wheat could be carried by rail in Germany for domestic consumption . . . [and] for most purposes of trade eastern Germany and the Rhine country were farther apart than Germany and New York or Germany and Buenos Aires.

The same thing was illustrated in the raising of sugar. . . . [To encourage sugar growing in Germany] the state railroads would sell tickets to the [sugar] laborer for less than the regular rates; but the landowners of other portions of Germany claimed that these special rates had the result of inducing the labor, which they would naturally employ, to leave them unless they paid higher wages—in effect these landowners claimed that the excursion tickets operated to take away their natural rights. . . .

This insistence upon the right to a market which proximity gives, this resistance to discrimination and favoritism shown by hauling at a low rate the merchandize of a community at a great distance so that it may compete in the same market with the nearby community, is also seen in the manufacture of iron and steel. And the effect of the recognition of the natural-right theory, the mileage theory, in Germany, resisted in vain by the Government, has been undeniably toward establishing a zone system of commerce, toward preventing Germany from becoming a common market, and to break it up into little principalities for the purposes of trade. . . .

You will find a similar condition in France to that which exists in Germany. [There the Government also owns the railroads, and a commission of thirty three highly trained experts, sets rates.] . . . The French experts find it necessary to deviate from their ordinary rates, and in a single year 80 per cent of the traffic was carried at special rates. What would be the effect upon public opinion in this country if our national railroad Commission should yield to fair economic demands and permit, if they could do so under this bill, such a deviation from the regular rates?

In England the railroads are not owned by the nation. . . . However, the Government established parliamentary rates. . . . They were maximum rates such as you propose to have created under this bill. The tendency has been for the railroads to adhere to the maximum rate or to approach it closely. The establishment of rates materially lower

would be a confession that the maximum rates were unreasonably high and might lead to action by the Government reducing the maximum rate. . . .

In this country the interstate rates have been made by the railroads with practically no check. . . . It has been the prime policy of the railroads to develop a vast continental traffic drawn at low rates and between the most remote sections of the country. It has been to make America a common market. The "natural right" theory has more than once been involved. The low long-distance rate brought the agricultural products of the West in competition with the farms of New York, New England, and Pennsylvania, in markets which, on the "natural right" theory, belonged to farmers of the last named States. And while your lands have gone up enormously in value the farms of New England and the East have greatly declined in value. Yet on the whole the East has benefited because it concentrated its energies upon manufactures and trade and the railroads took its products to the West at low rates in the cars which bore your produce East, and which would otherwise have returned empty. . . .

The Interstate Commerce Commission has more than once affirmed the "natural-right" theory, and if it is to pass upon the conflicting claims of sections it cannot escape from that theory. The elevator and dock owners and great merchants of New York protested against a rate from the West to New York on wheat destined for export lower than the rate to that city on wheat for internal consumption. The low rate for the export of wheat was directly for the benefit of the farmer, but it took from the men of New York certain profits that they claimed the "natural right" to have . . . and the Interstate Commerce Commission ordered that the rate on the wheat destined for export should be the same as that for New York. . . . [But the Supreme Court ultimately overturned the decision.]

The striking feature in the American railroad system, then, has been the remarkable development of the low-long-distance rate which has made of the country a common market and has stimulated trade between its most remote parts. . . . They are self-made rates, resulting from the free play of commercial and industrial forces. . . .

Suppose we had had a governmental commission [during the years of the depression following 1873] . . . when the East was politically the strongest section and held the dominant power. Is it not almost a certainty that they would have listened to the protest of the latter section against the disturbance of their domestic market . . . and that those now mighty and stable Commonwealths that lie beyond the Mississippi would have waited for that great development which the railroads forced upon them? Why, those great States are the very daughters of the economic American system [*sic*] of making freight rates. They would not have come into being under the system established by this bill, and yet they are now blindly clasping hands to strangle the mother who bore them. . . .

The most effective [railroad] competition is not between two or more parallel railroads serving the same points, but between railroads

connecting different sources of supply with the same market. The competition between markets has done more to reduce freight rates permanently in this country than the competition between parallel roads, including the injurious and spasmodic "cutting" in rate wars. . . . The primary instinct of self-preservation will inspire railroads to protect the markets of the territory they serve. Every interest of private property impels them not merely to preserve, but to build up their communities. But here you propose to have a governmental agency step in and set aside the primary edicts of commerce and trade. It may be for this agency to say not that the railroad shall serve its own interests by serving the interests of its territory, but to say that the natural advantages of its community are not equal to those of a competing community a thousand miles distant served by another railroad, and that the latter community should have a relatively better rate. And it will doubtless be claimed that it has power, in order to prevent what may be called discrimination between communities to readjust the rates.

Suppose the farmers of Vermont should contend before the Commission that they were only 200 miles from Boston and that it was a destruction of their natural market for the agricultural products of the West to be brought 1000 miles into Boston as cheaply as their own produce, and that their rate to Boston should be relatively reduced. What will your Government commission say to that? Or suppose some iron-manufacturing locality in Pennsylvania should assert that the low rates on coal and pig-iron to Worcester, in New England, was a discrimination against the rights of the former locality, what will your railroad commission say to that? It is inevitable that sooner or later, struggle as you may, you will repeat the experience of Germany and have a distance tariff. . . .

The Commission may by an order destroy the prosperity of a section of the country and may, in effect, impose restrictions upon commerce between States which it was the prime purpose of the Constitution to prevent. With the Government fixing rates, constituencies would inevitably carry their grievances into politics. I believe it will be contended that your bill in substance confers the power to impose a rate for one section in its relation to the rate of another section. You will therefore have the different parts of the country knocking at the door of the National Government for favors, and intrigue and politics will rekindle the sectional jealousies that have now been happily allayed. . . .

You propose to confer upon a mere human agency a practical task that would be superhuman. It is made their duty upon complaint to revise any and all the thousand millions or more freight rates in the country and an untold number of passenger rates. . . . We are to have a Commission made up of prodigies. . . . The President . . . last April . . . gave his notion—and a lofty one it was—of the character of the men who should constitute the Commission. "They should not," he said, "be swayed by any influence whatever—social, political, or any other—to show improper favoritism to the railroads," and, "on the other hand, if the rate is unjustly attacked, no matter if that attack has behind it the feeling or prejudice of 99 per cent of the people," they

will stand up against that attack. This is a noble ideal, but where are these paragons to be found? Even far higher officers than commissioners are not always found to be unresponsive to public sentiment. . . .

But the difficulty will be not so much with the men as with the system. They will be unable to perform those impossible duties, and then their work is near the political line, across which they will inevitably drift, and, as has been attempted already in some of the most enlightened States in the Union, some day, acting under pressure or under the spur of ambition or of a desire to "do things," some great [rate] schedule is liable to be broken into atoms, and the commerce and industry of one section may be arbitrarily transferred to another. I believe that it is vastly better for the interests of the country, so long as rates can be fixed under the operation of economic laws, to reject the artificial methods proposed by this bill, which makes of a commission a sort of Providence with power to create one city and destroy another. . . .

As representing some of the people of New England upon this floor, I say to you that I believe they do not care to offer up supplications to any statutory deity at Washington for the right to continue to exist, but that they will bravely take their chances with those economic forces which . . . have hitherto ruled. . . . New England can more safely reckon with the constant or slowly changing economic forces than to have her domestic commerce subject to the "theories of progress" of a commission, possibly of martinets and almost certainly of politicians. The prosperity of her people is vital to the existence of the great railroads which now serve them, but if that should be entirely disregarded, if the railroads should attempt to destroy themselves by destroying the communities which support them, the people of New England still have the courts. . . .

C.

THE RATE-MAKING DEBATE CONTINUED

¶ In 1910, progressive Republicans and many Democrats pressed for another railroad bill to eliminate rate discriminations embodied in special low rates to particular customers and communities and to provide aggrieved shippers with swift and effective relief against allegedly unfair rate changes. The Mann-Elkins Act emerged from Congress' deliberations. The Act established a Court of Commerce whose principal function was to expedite appeals from I.C.C. decisions, and, most significant, in an amendment to the original bill inserted by Republican Senator Joseph Dixon of Montana, it placed upon the railroads the burden of proving the justice of rates determined by other than pro rata mileage considerations. The amendment achieved this by removing a clause from Section 4 of the Interstate Commerce Act which the courts had interpreted so as to allow railroads to charge disproportionately, and even absolutely, high rates for short hauls compared with charges for particular longer ones along the same line wherever it was judged that

"substantially similar circumstances and conditions" did not obtain. The new amendment did not outlaw nonmileage differentials in rate-making; but it did require that, where the railroads insisted on differential rates, they had to justify them to the I.C.C. Since railroad traffic managers determined very few rates by a simple mileage formula, the amendment in effect required the I.C.C. to re-examine the major portion of railroad rates in the country.

Like the issue of Federal regulation in general, the issue on this "long-and-short-haul" amendment was not strictly between progressive and Old Guard Congressmen, nor between those who justified government control of railroad rates as a matter of general public policy and those who opposed such policy. Many Old Guard leaders from the interior states, like Republican Senator Reed Smoot of Utah, supported the Dixon amendment because of longstanding local resentment of rates which brought goods from the interior of the continent to the coastal cities more cheaply than from one point in the interior to another nearby. The railroads argued that water competition for commerce with the coastal regions forced rail rates down; there was no similar need (or pressure) for lower rates in the interior and forcing rates down "unnaturally" meant to force rail revenue below costs. Interior cities contended that the "discriminatory" rates caused them to be passed over as distribution centers despite their "natural" advantage of proximity to interior production centers.

The following exchanges between Senator Davis Elkins of West Virginia and Senator Joseph L. Bristow of Kansas and between Bristow and Senator Henry Cabot Lodge of Massachusetts illustrate both the economic and the public policy issues. Did Elkins or Lodge—or the previously excerpted argument of Congressman McCall—adequately rebut Bristow's reiterated point that the power to set rates "now exists in the hands of half a dozen railroad traffic managers" who use that power primarily, if not exclusively, "in the interest of the men they serve"? Do the hazards of government rate-making illustrated by McCall outweigh the hazards of rate-making in the hands of private entrepreneurs? Why does Lodge say he would prefer that "the Government make the rates entirely than undertake to fix them by law"? (*Congressional Record*, 62nd Congress, 1st Session [May 10, 1910], pp. 6014-15, 6016-18.)]

MR. ELKINS: This question brings on a war between communities. . . . Communities and sections on water want certain rates, to which their advantages entitle them, and communities and sections in the interior want certain or better rates without these same advantages. . . . The only thing you can do to enjoy the advantages of competitive points on water, and I regret to say, is to move to those points, and when the Senator does he will favor the long- and short-haul clause [as written in the Interstate Commerce Act of 1887]. . . .

MR. BRISTOW: . . . [The power to set rates] now exists in the hands of half a dozen railroad traffic managers, whose business it is to levy as great a tribute upon the communities they tax for transportation as they

can in the interest of the men they serve, and the communities that are taxed have no recourse or protection that is available in a practical way. . . . The rate on wheat from Wichita to Galveston for export is 25 cents per hundred pounds; the rate from Kansas City to Galveston is 18½ cents per hundred pounds. If wheat is shipped over the Santa Fe Railroad or the Rock Island Railroad to Galveston, it goes through Wichita on route; yet the people in Wichita are charged on the products of their farms 6½ cents per hundred pounds more for a haul which is 225 miles less than the people in Kansas City, and there is no water competition about it. Does the Senator from West Virginia think that is right?

Mr. ELKINS: I say . . . water does not control in this case. Kansas has several lines of road by which grain can be sent to Galveston, while Wichita has only one or two. Kansas City can ship grain to Chicago or New York for export beside reaching St. Louis by rail and then ship by water to Galveston. This makes the difference.

Mr. LODGE: Mr. President, if I may digress for a moment, I think that one great objection to this proposition to fix rates by law or decide as to a system of rates by law is that it is part of the tendency of the time, which perhaps it is useless to protest against, to bring in laws for everything, for everything that happens, to try and find a remedy by passing a statute, and to overlook the fact that laws are made by men and that laws do not make men. I think this constant invocation of the law is oftentimes perilous. . . . I am quite ready to take all the control of a railroad that the Government properly can take, to exercise the most rigid supervision, and to give every possible engine for that supervision, but I think we must beware of two things: attempting to do by law what law, in the nature of things, can not do, and, in the second place, conferring on any body of men a power too great to be trusted to anyone. . . .

Mr. BRISTOW: I should like to inquire of the Senator from Massachusetts who fixes all the railroad rates in the country now?

Mr. LODGE: I understand they are fixed by the railroad with an appeal to the supervision and regulation of the Interstate Commerce Commission.

Mr. BRISTOW: How do the railroads fix them?

Mr. LODGE: Roughly speaking, they fix them upon an elaborate computation of percentages based upon competitive points, which I can not undertake to explain.

Mr. BRISTOW: And who has control of the fixing of the rates? Who supervises that work?

Mr. LODGE: I suppose the traffic managers do it.

Mr. BRISTOW: As a matter of fact, do not the traffic managers adjust the rates according to the interests of different roads and by an understanding?

Mr. LODGE: I suppose they do. If they are fit for their place, they must.

Mr. BRISTOW: Does the Senator think it is any more dangerous to

the public welfare for the Interstate Commerce Commission to fix them than for this board of traffic managers to fix them?

Mr. LODGE: The fixing of a rate by the traffic managers is not final. There is an appeal. They can be overruled. Everything they do can be set aside.

Mr. BRISTOW: Is not there an appeal from the Interstate Commerce Commission?

Mr. LODGE: There is, to the highest court of the country.

Mr. BRISTOW: Wherein, then, could there be an injustice in permitting the Interstate Commerce Commission to fix the rates instead of a board of traffic managers?

Mr. LODGE: I did not say injustice. I [merely] think the present arrangement is very sound.

Mr. BRISTOW: The Senator has just remarked that we ought to avoid having a commission given arbitrary power to fix rates.

Mr. LODGE: That was my objection; I said, to giving anyone that power; that it was too much power to trust to anyone.

Mr. BRISTOW: Well, someone has that power now.

Mr. LODGE: I do not think they have that power now.

Mr. BRISTOW: And it is the traffic managers of railroads.

Mr. LODGE: I do not think the traffic managers of railroads have it at all.

Mr. BRISTOW: That they have not the power of fixing the rates?

Mr. LODGE: No.

Mr. BRISTOW: Then, who has?

Mr. LODGE: The final power to fix rates lies in the Supreme Court of the United States.

Mr. BRISTOW: Would it not lie there if the Interstate Commerce Commission had the power that the traffic managers now exercise? . . .

Mr. LODGE: . . . Very well; that is putting in the court of commerce; that is all.

Mr. BRISTOW: Instead of the circuit court. That is the only change.

Mr. LODGE: Yes.

Mr. BRISTOW: Now, the Senator is assuming that it would be dangerous to give this power to the Interstate Commerce Commission.

Mr. LODGE: Not in the least. I am not assuming anything of the kind.

Mr. BRISTOW: Why, then, does the Senator from Massachusetts object to the amendment of the Senator from Montana?

Mr. LODGE: . . . [B]riefly stated, my objection is that I do not believe in fixing rates partially or wholly by law. I do not like government rate making, but I would rather have the Government make the rates entirely than undertake to fix them by law. Let somebody make them who has some discretion.

Mr. BRISTOW: Is there any proposition to fix the rates by law specifically?

Mr. LODGE: Certainly. It is attempting to fix a rate by law when you put on an independent proposition that a short haul shall never pay more than a long haul and take out the modifying words of the Act of 1887 relative to similar conditions.

IV ~ A MORE DETAILED LOOK AT THE PROBLEM

Mr. BRISTOW: Does the Senator contend that the amendment of the Senator from Montana fixes an arbitrary rule that can not be deviated from?

Mr. LODGE: It seems to me to have that effect, to be a beginning of that process, and I said at the start, as the Senator would have learned if he had listened to me, that it went a very short way.

Mr. BRISTOW: A very short way?

Mr. LODGE: And that I thought it was a good rule to resist at the beginning what I think an extremely dangerous policy.



THE ISSUE "RESOLVED"

SO THE BRISTOWS CONTENDED THAT NO POWER AS GREAT AS THE POWER TO determine what economic opportunities might be available to whole regions of the nation—the power implicit in railroad rate-making—could be allowed to reside with private entrepreneurs who sought above all ("rightly," Holmes would have said) their own interest. Meanwhile the McCalls argued that Federal control meant political control, which in turn meant not rationality and justice but capricious decisions that turned on purely parochial pressures—pressures which no well-intentioned board of economists, sociologists, or "efficiency experts" could withstand. Beneath these high-level contentions arose the complaints from Kansans that wheat from Wichita cost six and a half cents more than wheat from Missouri because the I.C.C. was too weak, and the fears of New Englanders for the future of Worcester if the I.C.C. should become any stronger.

Thus the controversy raged; no matter how it was argued, it never turned out simple. It was never, of course, a contest between the forces of light and the forces of darkness. Neither was it one entirely between scientific enlightenment and procrustean tradition, progressivism and reaction, vested interests and the public interest, paternalism and laissez-faire, government control and private enterprise, or the corporations and "the people." As a consequence, the issue has never been resolved. Or rather, it has been resolved in a characteristically empirical way, in the form of a continuum of compromises among a multiplicity of rival interests, each defining The Ideal in terms of its own experience and its own preference.

APPLIED SCIENCE VS. GRASS ROOTS

☛Insofar as many reformers in the Progressive Era believed that The Ideal was something which reasonable men could agree on, they came

inevitably to consider their efforts futile. Perhaps nowhere did this attitude appear more sharply than among the conservationists. No one ever disputed the absolute power of the Federal government over the public domain. If the Federal government was a true instrument for shaping a just society, it might demonstrate its potential in its management of the nation's natural resources. But the central problem remained: What was the formula for a scientific, equitable, and beneficent disposition of the country's natural riches? Here, no less than in cases where the Federal government's powers were limited by residual private rights and privileges, there was vast room for disagreement about the proper use of those powers.

Not only did the conservationists encounter resistance from regional and economic interest groups which faced specific risks from long-range reform programs, they also met it from governmental administrators who jealously guarded their prerogatives against efforts to coordinate their functions with other departmental heads in the interest of broad, multiple-purpose resource development. Congress similarly recoiled at the prospect of granting the Chief Executive the kind of discretionary power he appeared to need to establish interdepartmental coordination of resource programs. In effect, what the conservationists ran up against was the structure of the American government with its republican institutions, its checks and balances, and its provision for "grass-roots" participation (or involvement) in general policy-making decisions.

[In the concluding selection, Samuel P. Hays explains the ideals of the conservationists and what happened to them. Professor Hays himself poses the questions which all students of progressivism and of the problem of government regulation must ponder. (Because the excerpts have been taken from widely separated parts of Professor Hays's book, it has been necessary to transpose several passages in order to present a reasonably coherent and continuous narrative.) (Reprinted by permission of the publishers. Adapted from Samuel P. Hays, *Conservation and the Gospel of Efficiency*. Cambridge, Mass.: Harvard University Press. Copyright, 1959, by the President and Fellows of Harvard College.)]

THE CONSERVATION movement has contributed more than its share to the political drama of the twentieth century. . . . Cast in the framework of a moral struggle between the virtuous "people," and the evil "interests," [conservation controversies] . . . have provided issues tailor-made to arouse the public to a fighting pitch, and they continue to inspire the historian to recount a tale of noble and stirring enterprise. This crusading quality of the conservation movement has given it an enviable reputation as a defender of spiritual values and national character. . . .

But, however much an asset in promoting conservation this dramatic

fervor has constituted a major liability in its careful analysis. For the moral language of conservation battles differed markedly from the course of conservation events. . . . Conservation neither arose from a broad popular outcry, nor centered its fire primarily upon the private corporation. Moreover, corporations often supported conservation policies, while the "people" just as frequently opposed them. In fact, it becomes clear that one must discard completely the struggle against corporations as the setting in which to understand conservation history. . . .

Conservation, above all, was a scientific movement, and its role in history arises from the implications of science and technology in modern society. Conservation leaders sprang from such fields as hydrology, forestry, agrostology, geology, and anthropology. . . . These leaders brought the ideals and practices of their crafts into federal resource policy. Loyalty to these professional ideals, not close association with the grass-roots public, set the tone of the Theodore Roosevelt conservation movement. Its essence was rational planning to promote efficient development and use of all natural resources. . . . It is from the vantage point of applied science, rather than of democratic protest, that one must understand the historic role of the conservation movement. . . .

The popular view that in a fit of pessimism [about the future of American resources, conservation leaders] withdrew vast areas of the public lands from present use for future development does not stand examination. In fact, they bitterly opposed those who sought to withdraw resources from commercial development. They displayed that deep sense of hope which pervaded all those at the turn of the century for whom science and technology were revealing visions of an abundant future.

The political implications of conservation, it is particularly important to observe, grew out of the political implications of applied science rather than from conflict over the distribution of wealth. Who should decide the course of resource development? Who should determine the goals and methods of federal resource programs? The correct answer to these questions lay at the heart of the conservation idea. Since resource matters were basically technical in nature, conservationists argued, technicians, rather than legislators, should deal with them. Foresters should determine the desirable annual timber cut; hydraulic engineers should establish the feasible extent of multiple-purpose river development and the specific location of reservoirs; agronomists should decide which forage areas could remain open for grazing without undue damage to water supplies. Conflicts between competing resource users, especially, should not be dealt with through the normal processes of politics. Pressure group action, logrolling in Congress, or partisan debate could not guarantee rational and scientific decisions. Amid such jockeying for advantage with the resulting compromise, concern for efficiency would disappear. Conservationists envisaged, even though they did not realize their aims, a political system guided by the ideal of efficiency and dominated by the technicians who could best determine how to achieve it. . . .

Instead of probing the political implications of the technological

spirit, [historians] have repeated the political mythology of the "people versus the interests" as the setting for the struggle over resource policy. . . . The progressive revolt of the early twentieth century, so most historians have argued, was an attempt to control private, corporate wealth for public ends. . . . According to one such writer, ". . . the progressive movement in the Republican party during Mr. Roosevelt's administration manifested itself primarily in a struggle against corporations. The struggle had two phases; first and most important, was the attempt to find some adequate means of controlling and regulating corporate activities; and second, and almost as important, was the resistance to the efforts of corporations to exploit the natural resources of the nation in their own behalf." . . .

Yet, analysis from outside such a limited perspective reveals the difficulty of equating the particular views of a few scientific leaders with an objective "public interest." [In the first place] Those views did not receive wide acceptance; they did not arise out of widely held assumptions and values. They came from a limited group of people, with a particular set of goals, who played a special role in society. [Secondly] Their definition of the "public interest" might well, and did, clash with other competing definitions. . . .

Resource exploitation, in fact, reflected the attitude not merely of corporations, but of Americans in all walks of life. . . . Everyone in the nineteenth century hoped to make a killing from rising land values and from quickly extracting the cheap, virgin resources of the nation. . . . [W]hen the conservation movement arose in the early twentieth century, it became clear that larger corporations could more readily afford to undertake conservation practices, that they alone could provide the efficiency, stability of operations, and long-range planning inherent in the conservation idea. Larger owners could best afford to undertake sustained-yield forest and range management, and understood more clearly than did small farmers the requirements for large-scale irrigation and water power development.

That large owners frequently supported conservation policies and small owners just as frequently opposed them also forces the historian to rethink the movement's significance. . . . Antimonopolists did not conspicuously push conservation measures, and in fact frequently opposed them. The campaign to establish forest reserves had its origin not in antimonopolism, but in the drive by wilderness groups to perpetuate untouched large areas of natural beauty, by Eastern arboriculturists and botanists to save trees for the future and by Western water users, both large corporations and small owners, to preserve their water supply by controlling silting. Large cattlemen backed the range leasing measure, while settlers opposed it. Groups representing small farmers supported [Roosevelt's Chief Forester, Gifford] Pinchot during his fight for federal water power regulation, but this support came from those whose lands were threatened with flooding by proposed private water power reservoirs, and who in later years repeatedly opposed federal reservoir construction for the same reason. . . .

The conservation movement did not involve a reaction against large-

scale corporate business, but, in fact, shared its views in a mutual revulsion against unrestrained competition and undirected economic development. Both groups placed a premium on large-scale capital organization, technology, and industry-wide cooperation and planning to abolish the uncertainties and waste of competitive resource use. . . .

This spirit of efficiency appeared in many realms of American life, in the professional engineering societies, among forward-looking industrial management leaders, and in municipal government reform as well as in the resource management concepts of Theodore Roosevelt. The possibilities of applying scientific and technical principles to resource development fired federal officials with enthusiasm for the future and imbued all in the conservation movement with a kindred spirit. . . . This was the gospel of efficiency—efficiency which could be realized only through planning, foresight, and conscious purpose. . . .

Grass-roots groups throughout the country had few positive objectives in common but they shared a violent revulsion against the scientific, calculated methods of resource use adjustment favored by the conservationists. Both large and small property owners knew that the conservationists' plans involved methods of decision far beyond their control, and each group feared that a broader program would obscure its own specific needs or minimize its own project. Basin-wide river planning might require a dam in another locality. Multiple-purpose dams might provide less water desperately needed for navigation and more for electric power for some remote industry. Rigid grazing control might benefit the irrigator in the lower basin, but curtail the activities of stockmen on the headwaters. Each group desired financial and technical aid from the federal government, and each supported executive action when favorable to it, but none could feel a deep sense of participation in the process by which technical experts made resource decisions. . . .

The deepest significance of the conservation movement . . . lay in its political implications: how should resource decisions be made and by whom? Each resource problem involved conflicts. Should they be resolved through partisan politics, through compromise among competing groups, or through judicial decision? To conservationists such methods would defeat the inner spirit of the gospel of efficiency. Instead, experts, using technical and scientific methods, should decide all matters of development and utilization of resources, all problems of allocation of funds. Federal land management agencies should resolve land-use differences among livestock, wildlife, irrigation, navigation, and flood control interests to promote the highest multiple-purpose development of river basins. The crux of the gospel of efficiency lay in a rational and scientific method of making basic technological decisions through a single, central authority.

Resource users throughout the country differed sharply from this point of view. They did not share the conservationists' desire for integrated planning and central direction. . . . Resource users formed their opinions about conservation questions within the limited experience of specific problems faced in their local communities. They understood little and cared less for the needs of the nation as a whole. . . .

[In the end,] Resource users played a fundamental role in shaping the character of development in a manner contrary to the aim of conservationists. They created a single, rather than a multiple-purpose attack on resource affairs. Economic organizations concerned with single interests—such as navigation, flood control, or irrigation—joined with administrative agencies in charge of individual programs and congressional committees which dealt with specialized subjects to defeat an integrated approach. Through policies devoted to the development of a single resource, Congress found protection against independent executive action, administrative agencies discovered a means to prevent coordination of their work with other bureaus, and local interests created programs of direct benefit to themselves and under their control. Private organizations and their congressional allies established this pattern. . . . Single-purpose policies, impractical from the point of view of the conservation ideal of maximum development through scientific adjustment of competing uses, became the predominant pattern because they provided opportunities for grass-roots participation in decision-making. They enabled resource users to feel that they had some degree of control over policies that affected them.

The first American conservation movement experimented with the application of the new technology to resource management. Requiring centralized and coordinated decisions, however, this procedure conflicted with American political institutions which drew their vitality from filling local needs. This conflict between the centralizing tendencies of effective economic organization and the decentralizing forces inherent in a multitude of geographical interests presented problems to challenge even the wisest statesman. The Theodore Roosevelt administration, essentially hostile to the wide distribution of decision-making, grappled with this problem but failed to solve it. Instead of recognizing the paradoxes which their own approach raised, conservationists choose [*sic*] merely to identify their opposition as "selfish interests." Yet the conservation movement raised a fundamental question in American life: how can large-scale economic development be effective and at the same time fulfill the desire for significant grass-roots participation? How can the technical requirements of an increasingly complex society be adjusted to the need for the expression of partial and limited aims? This was the basic political problem which a technological age, the spirit of which the conservation movement fully embodied, bequeathed to American society.

APPENDIX

Chronology and Summaries of Legislation Which Represented Major Federal Intervention in the Nation's Political Economy: 1887-1917.
(Tariffs Excluded)

1887—Interstate Commerce Act: (1) establishes the Interstate Commerce Commission with power to investigate, report on, make recommendations on, and issue "cease and desist" orders to interstate carriers in the course of administering the restrictive provisions of the Act; (2) authorizes the I.C.C. to require interstate carriers to submit annual reports on financial, rate-making, safety, and operational matters; (3) states that "all charges . . . shall be reasonable and just"; (4) outlaws rebates and other forms of "unjust discrimination"; (5) outlaws higher rates "for a shorter than for a longer distance over the same line, in the same direction," "under substantially similar circumstances and conditions," except in special cases as approved by the I.C.C. [Section 4]; (6) outlaws pools and combinations.

1890—Sherman Anti-Trust Act: (1) declares illegal "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of [interstate or foreign] trade"; (2) provides "threefold damages" to those injured by violation of the Act.

1891—Forest Reserve Act: authorizes the president to set aside timber lands and to establish national parks.

1901—Right-of-Way Act: codifies all previous right-of-way grants across public lands for irrigation or other water-use purposes; (2) gives the secretary of the interior power (later transferred to the secretary of agriculture) to issue right-of-way permits or licenses.

1902—Newlands Reclamation Act: reserves revenue from sales of public lands and fees for use of water power on public lands for the purpose of Federal irrigation projects in sixteen western states.

1903—Establishment of the Bureau of Corporations [Section 6 of an Act to Create a Department of Commerce and Labor]: gives the commissioner of corporations, who is made head of the Bureau, "the same power and authority in respect to corporations . . . as is conferred on the Interstate Commerce Commission."

1906—Hepburn Act [Amendment of the Interstate Commerce Act of 1887]: (1) includes oil pipe lines, express companies, rail switches, private cars, and terminal facilities within I.C.C. jurisdiction; (2) forbids any railroad to transport any commodity in which it has a proprietary interest, except lumber and lumber products; (3) reinforces the prohibitions against free passes and against rebates; (4) authorizes the I.C.C. to prescribe a maximum rate if upon complaint it finds that a rate is "unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or prejudicial"; (5) empowers the I.C.C. to award damages against a carrier; (6) explicitly authorizes a circuit court of appeals to suspend I.C.C. orders upon a hearing after five days notice to the Commission.

1906—Pure Food and Drug Act: (1) requires accurate labelling of all canned or packaged food and drugs; (2) forbids the manufacture,

sale, or transportation in interstate commerce of adulterated or fraudulently labelled food and drug products; (3) authorizes the Department of Agriculture to fix purity standards.

1906—Meat Inspection Act: requires Federal inspection of all meat packaging companies which sell their products beyond state lines.

1910—Mann-Elkins Act [Amendment of the Interstate Commerce Act of 1887]: (1) authorizes the I.C.C. to suspend any new rate for 120 days and, if necessary, for another six months; (2) amends Section 4 of the Act of 1887 so as to outlaw higher rates "for a shorter than for a longer distance over the same line *or route* in the same direction," and so as to eliminate the clause "under substantially similar circumstances and conditions" (the effect of which was to require interstate carriers to justify to the I.C.C. in advance rates that were higher for shorter than for longer hauls); (3) establishes a Court of Commerce to expedite and improve procedure on appeals from I.C.C. decisions and to supersede the circuit courts on such appeals. (The Commerce Court system soon went into disuse as Congress failed to provide for its maintenance.)

1913—Federal Reserve Act: establishes twelve Federal Reserve Banks authorized (1) to issue Federal Reserve Notes (legal tender) to private banks in exchange for notes (tantamount to "I.O.U.'s") secured by commercial or some types of agricultural assets; (2) to raise or lower interest rates. (The Act thus contributed to the development of a flexible currency which expanded and contracted with the expansion or contraction of business and gave the Federal government some greater control than it had had before over the accessibility of credit to the nation's economic interests.)

1914—Clayton Anti-Trust Act [Amendment to the Sherman Act of 1890]: prohibits (1) price discriminations which induce the creation of monopolies; (2) tying-contracts (contracts which required a purchaser or lessee to abstain from purchasing or using the products of the seller's or lessor's competitors); (3) interlocking boards of directors in industrial consolidations capitalized at more than \$1 million; (4) acquisition by one company of the stock of a competing company where such acquisition tends to reduce competition in the industry substantially. The Act also gives somewhat nebulous immunity from anti-trust prosecution to labor unions and agricultural cooperatives; makes strikes, primary boycotts, and peaceful picketing legal where Federal law prevails; and provides for jury trials in contempt of court cases (as when strikers are held in contempt for violating an anti-strike court injunction).

1914—Federal Trade Commission Act: supersedes the Bureau of Corporations; in addition to the investigatory and advisory functions of the old Bureau, the F.T.C. is empowered to issue "cease and desist" orders to corporations deemed to be engaged in unfair trade practices as construed by the Commission, subject to judicial review.

1914—Smith-Lever Act: provides for Federal financing of agricultural extension (education and demonstration) work, to aid farmers in modern agricultural techniques. (Supplemented by the Smith-Hughes Act of 1917.)

1915—*La Follette Seamen's Act*: establishes minimum living and safety conditions for seamen on American merchant ships.

1916—*Warehouse Act*: establishes Federally licensed and bonded warehouses authorized to issue, for specified agricultural commodities, negotiable warehouse receipts which farmers could use as security for loans.

1916—*Federal Farm Loan Act*: establishes a Federal Farm Loan Board authorized to charter Federal Land Banks and national farm loan associations; the Land Banks provide funds to the loan associations, which in turn grant loans at less-than-prevailing interest rates to farmers on the security of farm mortgages. The Act also authorizes the establishment of private joint-stock farm mortgage banks.

1916—*Child Labor Act*: forbids shipment in interstate commerce of commodities produced by the labor of children under a specified age. (Declared unconstitutional in 1918.)

1916—*Adamson Eight-Hour Act*: establishes an eight-hour day and time and a half for overtime for railroad workers. (This was the Federal government's first major venture into the determination of wage-hour conditions for workers not employed by the Federal government or by companies doing projects for the Federal government.)

FOR FURTHER READING

For the best surveys of the Progressive Era, see George E. Mowry, *The Era of Theodore Roosevelt, 1900-1912* (New York: Harper, 1958) and Arthur S. Link, *Woodrow Wilson and the Progressive Era, 1912-1917* (New York: Harper, 1954). Harold U. Faulkner's *The Decline of Laissez Faire, 1897-1917*, vol. VII of Henry David, et al., eds., *The Economic History of the United States* (New York: Holt, 1951) contains especially valuable bibliographical material and provides the emphasis on economic history which is of particular use to students of Federal regulatory activities, although in view of historians' destruction of the myth of nineteenth-century laissez faire the title is perhaps inappropriate. Solomon Fabricant's *The Trend of Government Activity in the United States Since 1900* (Princeton, N.J.: National Bureau of Economic Research, 1952) deals with activities on all levels of government, not specifically with Federal regulation, and provides indispensable statistical material for any study of the role of government in the American political economy. Samuel Hays, *The Response to Industrialism, 1885-1914* (Chicago: Univ. of Chicago Press, 1957) and Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.* (New York: Knopf, 1955) are valuable interpretive essays which treat the issues of progressivism from original perspectives. Sidney Fine, *Laissez-Faire and the General Welfare State: A Study of Conflict in American Thought, 1865-1901* (Ann Arbor: Univ. of Michigan Press, 1956) presents an excellent analysis of the discrepancy between American rhetoric and practice.

William Z. Ripley, *Railroads: Finance and Organization* (New York: Longmans, 1915) is the companion work to his volume excerpted here; his *Railroad Problems* (Boston: Ginn, rev. ed., 1913) is also useful. Ripley also edited a collection of incisive contemporary studies on *Trusts, Pools, and Corporations* (Boston: Ginn, 1905), while a more recent synthesis of Federal policy toward the "trusts" may be found in Hans B. Thorelli, *Federal Anti-Trust Policy: Origination of an American Tradition* (Baltimore: Johns Hopkins, 1955). I. L. Sharfman, *The Interstate Commerce Commission*, 5 vols. (New York: Oxford Univ. Press, 1931-37); Thomas C. Blaisdell, Jr., *Federal Trade Commission: An Experiment in the Control of Business* (New York: Oxford Univ. Press, 1932); Gerard C. Henderson, *The Federal Trade Commission* (New Haven: Yale Univ. Press, 1925); and Henry Parker Willis, *The Federal Reserve System* (New York: Ronald Press, 1923) treat the major Federal regulatory agencies. Don D. Lescohier and Elizabeth Brandeis, *History of Labor in the United States, 1896-1932* (New York: Macmillan, 1935), the third volume in John R. Commons' four-volume study, provides the standard treatment of nonunion labor and labor legislation history for the period. Theodore Saloutos and John D. Hicks, *Agricultural Discontent in the Middle West, 1900-1939* (Madison: Univ. of Wisconsin Press, 1951) and Carl C. Taylor, *The Farmers Movement, 1620-1920* (New York: American Book, 1953) present original treatment of the agriculture problem.

For contemporary progressive theory concerning the role of the

Federal government, Herbert Croly's *The Promise of American Life* (New York: Macmillan, 1909), Walter Weyl's *The New Democracy* (New York: Macmillan, 1912), and Walter Lippmann's *Drift and Mastery* (New York: Holt, 1914; Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1961) are often regarded as the "textbooks of progressivism." Lippmann's book and a collection of Theodore Roosevelt's speeches and articles, 1910-12, *The New Nationalism* (Englewood Cliffs; N.J.: Prentice-Hall, 1961) have recently been reissued with an excellent introductory essay in each by William E. Leuchtenburg. For an extensive analysis of Weyl, Croly, and Lippmann in the progressive era, see Charles Forcey, *The Crossroads of Liberalism* (New York: Oxford Univ. Press, 1961).





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